

19-10651

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

DARREN MICKELL, an individual,
Plaintiff-Appellant,

—v.—

BERT BELL / PETE ROZELLE NFL PLAYERS RETIREMENT PLAN,
a welfare benefit plan,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

APPENDIX
VOLUME V OF VII

MICHAEL L. JUNK
GROOM LAW GROUP
1701 Pennsylvania Avenue, NW,
Suite 1200
Washington, DC 20006
(202) 857-0620

BRIAN D. EQUI
GOLDBERG SEGALLA, LLP
800 N. Magnolia Avenue, Suite 1201
Orlando, Florida 32803
(407) 458-5600

Attorneys for Defendant-Appellee

ALICIA PAULINO-GRISHAM
DI LAW GROUP
3201 West Commercial Boulevard,
Suite 227
Fort Lauderdale, Florida 33309
(954) 989-9000

Attorneys for Plaintiff-Appellant

Darren Mickell v. Bert Bell/Pete Rozelle NFL Players Retirement Plan

No. 19-10651-A

INDEX OF APPENDIX

FILE DATE	DOCKET/ TAB	DOCUMENT TITLE	PAGE
	A	District Court Docket	1
10/16/15	1	Complaint	13
11/18/15	10	Answer to Plaintiff's Complaint	101
11/18/15	52	Excerpts from Attachments to Defendant's Motion for Judgment	117
01/15/19	60	Order on Parties' Dispositive Motions	1546
01/15/19	61	Final Judgment	1572
	Cert of SVC	Certificate of Service	



Bert Bell/Pete Rozelle NFL Player Retirement Plan

200 Saint Paul Street • Suite 2420 • Baltimore, Maryland 21202-2008
410-685-5069 • 800-638-3186 • Fax 410-783-0041



NFL PLAYERS
ASSOCIATION

July 28, 2014

Mr. Darren Mickell
9250 Chelsea Dr
Miramar, FL 33025

**Re: Appeal for Disability Benefits
Confirmation and Scheduling of Required Medical Examination**

Dear Mr. Mickell:

We write to confirm that your medical examination has been scheduled as follows:

Appointment Date/Time:	Tuesday, August 19th, 2014 19:15am
Physician:	Barry McCasland, M.D.P.C.
Specialty:	Neurologist
Location:	5671 Peachtree-Dunwoody Road, Suite 515 Atlanta, GA 30342

On the day of your appointment, be sure to bring one form of photo identification with you to the examination and, after checking in at the facility, inform the receptionist that you are scheduled to see the physician identified above for purposes of a neutral examination conducted on behalf of the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

Based upon the disabilities identified in your application, the physician will be prepared to evaluate any impairments to the following body parts:

- NEUROCOGNITIVE, HEADACHES, MEMORY ISSUES, CONCENTRATION ISSUES, WORD LOSS, FOCUS ISSUES, PROCESSING ISSUES, FOLLOWING DIRECTION PROBLEMS

If you have any additional medical records you would like the physician to review, you must provide those records to the Plan Office **at least ten (10) days prior to the scheduled examination.**

By the time of your appointment, the Plan will have already provided the physician with your application and any medical records timely submitted to the Plan Office. However, you are encouraged to bring to the examination any relevant x-rays, MRIs, or other images/films that are in your possession.

For travel and planning purposes, be sure to allow approximately three to four hours for your examination and any follow-up testing the physician may require.

A copy of the Plan's Travel Expense Policy is enclosed. Please review it and contact Art Solis with "The Travel Store," (310) 752-9157, to arrange air transportation and lodging, if necessary.

You are reminded that **you (and your representatives, family, friends, etc.) may not contact the physician's office for any reason.** Please contact the Plan Office if you have any questions or concerns, including any problem attending the examination on the scheduled date,

MICKELL-0881

A0997

as your application for disability benefits may be denied if you fail to attend the scheduled examination.

If you have any questions, please contact the Plan Office.

Very truly yours,

A handwritten signature in black ink, appearing to be 'MA' or similar initials, written in a cursive style.

Megan Anderson
Benefits Coordinator

cc: Mindy Chmielarz

MICKELL-0882

A0998



Bert Bell/Pete Rozelle NFL Player Retirement Plan

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410-685-5069 • 800-638-3186 • Fax 410-783-0041



NFL PLAYERS
ASSOCIATION

July 28, 2014

Mr. Darren Mickell
9250 Chelsea Dr
Miramar, FL 33025

**Re: Appeal for Disability Benefits
Confirmation and Scheduling of Required Medical Examination**

Dear Mr. Mickell:

We write to confirm that your medical examination has been scheduled as follows:

Appointment Date/Time:	Wednesday, August 20th, 2014 08:00am-4:30pm
Physician:	Stephen Macciocchi, Ph.D.
Specialty:	Neuro-Psychologist
Location:	5775 Peachtree-Dunwoody Road, Building C, Suite 200 Atlanta, GA 30342

On the day of your appointment, be sure to bring one form of photo identification with you to the examination and, after checking in at the facility, inform the receptionist that you are scheduled to see the physician identified above for purposes of a neutral examination conducted on behalf of the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

Based upon the disabilities identified in your application, the physician will be prepared to evaluate any impairments to the following body parts:

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MICKELL-0883

A0999

as your application for disability benefits may be denied if you fail to attend the scheduled examination.

If you have any questions, please contact the Plan Office.

Very truly yours,

A handwritten signature in black ink, appearing to be 'ma' with a stylized flourish at the end.

Megan Anderson
Benefits Coordinator

cc: Mindy Chmielarz

MICKELL-0884

A1000



MICKELL-0885



Bert Bell/Pete Rozelle NFL Player Retirement Plan

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NFL PLAYERS
ASSOCIATION

Total & Permanent Disability Benefits

PHYSICIAN'S REPORT FORM

AUG 26 2014

NFL PLAYER BENEFITS

Notice to Physician: To preserve your independence and the integrity of the decision-making process, you must avoid contacts with attorneys or other representatives of the player seeking disability benefits from the Bert Bell/Pete Rozelle NFL Player Retirement Plan. Please notify Rose Mary Eves or Paul Scott at the Plan Office (Tel. No. (800)638-3186) if you are contacted by any of these individuals.

To Be Completed By Plan Office:

1. Player's Name Darren Mickell Date of Birth 1970
2. Address 9250 Chelsea Dr, Miramar, FL 33025
3. Credited Seasons 1992-1997, 1999-2000 Telephone (786)277-5788 M

4. When did you first examine the player? 8/19/145. Have you or have any of your partners ever treated the player? Yes _____ No ☒6. What is the nature of the impairment? Headaches, Mild cognitive impairment, possible syphilis (treated), Depression/Anxiety

7. Impairment Information (attach additional sheets if necessary)

Impairment to:	Impairment results from:	Has the impairment persisted or is it expected to persist for at least 12 months from the date of its occurrence?
Headaches	<input type="checkbox"/> Illness <input type="checkbox"/> Injury <input checked="" type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Cannot be determined
Mild cognitive impairment	<input type="checkbox"/> Illness <input checked="" type="checkbox"/> Injury (possibly) <input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Cannot be determined
Depression/Anxiety	<input checked="" type="checkbox"/> Illness <input type="checkbox"/> Injury <input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Cannot be determined
Syphilis (treated)	<input checked="" type="checkbox"/> Illness <input type="checkbox"/> Injury <input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Cannot be determined

Barry J. McCasland, M.D.
(Neutral Neurologist)

MICKELL-0886

A1002

Physician's Report for *Darren Mickell*
Page 2

8. In your opinion, is the patient totally disabled to the extent that he is substantially unable to engage in any occupation for remuneration or profit?

Yes _____ No ☒

If you checked Yes:

- Specify the medical conditions and how these conditions prevent the Player from working.

- How long do you estimate the Player will be unable to be gainfully employed at any occupation? _____

If you checked No:

- In what type of employment can he engage?

No limits from neurologic standpoint - Premorbid estimates of function are not consistent with academic professions.

9. Additional remarks by physician Pl. should follow-up with his primary care M.D. to be sure his syphilis was fully/adequately treated.

Please attach the required Medical Report with this form.

Physician's Name (typed or printed): Barry J. McCasland, M.D.

Address Bernstein & McCasland, M.D. P.C.

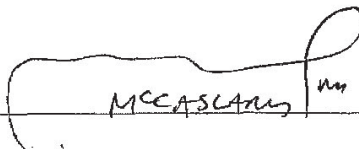
5671 Peachtree-Dunwoody Rd

Suite 515

Atlanta, GA 30342

Telephone (404)531-0334

I certify that I have personally examined this Player and have personally reviewed any and all records of this Player given to me, and have personally reviewed the attached narrative reports. I also certify that my ratings and comments reflect my best professional judgment, and that I am not biased toward or against this Player.

Signature  McCasland Examination Date 8/19/14

Mail completed form with your narrative report to Rose Mary Eves at the Bert Bell/Pete Rozelle NFL Player Retirement Plan, 200 St. Paul Place, Suite 2420, Baltimore, MD 21202-2040.

MICKELL-0887

BERNSTEIN & McCASLAND, M.D. P.C.

Richard B. Bernstein, M.D.

Fellow of the American Board of Psychiatry & Neurology

Barry J. McCasland, M.D.

Diplomate of the American Board of Psychiatry & Neurology

Clinical Neurology

Electrodiagnosis (EMG/NCV/EP)

Electroencephalography (EEG)

Claimant Name: **MICKELL, Darren**Date of Birth: **70**Date of Service: **8/19/14****RECEIVED**

AUG 26 2014

NFL PLAYER BENEFITS**REFERRAL SOURCE:** Bert Bell/Pete Rozelle NFL Player Retirement Plan.**CHIEF COMPLAINT:** Headaches, cognitive problems.

HISTORY OF PRESENT ILLNESS: This is a 44-year-old right-handed African American male, retired NFL football player, with the above complaints. The claimant states that he has suffered a concussion with loss of consciousness on one single occasion during practice, and that he was not kept out of practice for any length of time following the event. When asked how many times he has suffered a blow to the head that did not cause him to lose consciousness, but resulted in transient disorientation, he stated there were too many to count. The claimant began having HEADACHES about two or three years after beginning his football career. Presently, the headaches occur once or twice each week lasting an average of 15-to 20 minutes each. He takes over-the-counter medications for them. He is not under the care of any specific physician for his headaches. Pain is felt all over the head. The claimant has a number of cognitive complaints as well. He states that he has prominent difficulties with MEMORY. He may drive somewhere and forget along the way where he is going. He does not have the memory capabilities to pay his own bills, and therefore his mother pays them for him. As a result of his memory problems, he states that he no longer has any patience and that he angers quickly. The claimant also complains of the INABILITY TO FOCUS and POOR CONCENTRATION. For example, while watching a movie he may "zone out" for five or ten minutes, and cannot recall what was said or done in the intervening time. He believes that these symptoms caused him to make numerous mistakes on his last job as a freight handler. He also complains of WORD LOSS, that is, often coming out with the wrong word, or the inability to come up with a specific word in his vocabulary. He complains of PROCESSING ISSUES, referring to the inability to extract meaning from information presented to him. Finally, he states that he is unable to properly FOLLOW DIRECTIONS. Similar to his lack of concentration, the claimant states that he is often instructed to do something and, almost immediately, cannot recall what he was told to do.

PAST MEDICAL HISTORY: Multiple bilateral knee and shoulder surgeries.**MEDICATIONS:** None.**ALLERGIES:** None.

5671 Peachtree-Dunwoody Road Suite 515 Atlanta, GA 30342 Phone: 404-531-0334 Fax: 404-531-0494

MICKELL-0888

Claimant Name: MICKELL, Darren
Date of Service: 8/9/14

SOCIAL HISTORY:

The claimant was born and raised in Miami, Florida. He attended middle in high school without repeating any grades, and without requirement for tutoring or special classes. After graduating high school he attended the University of Florida where he studied for three years, playing football during two of those years. He required a tutor in college. The claimant states that he majored in Criminal Justice, but did not obtain a degree. He left college for the NFL in 1992 and played for a total of four teams as Defensive End. The claimant left the NFL in 2000, citing that he was "too old." After retiring from the NFL the claimant participated in coaching, mostly Pop Warner and high school teams. He is no longer coaching. He began working for a freight handling company in a very physically demanding position, but this ended approximately two years ago. The claimant has not been employed since leaving the freight handling job. Presently the claimant is unmarried, living in Miamar, Florida, with his mother, great grandmother of 105 years, and his daughter. He has three additional children with whom he does not live, though he states that he sees them regularly. The claimant denies any history of arrests for violent crimes or violent behaviors. He has never had a restraining order taken out against him. He denies smoking. He consumes alcoholic beverages socially. Hobbies include fishing and playing pool.

Claimant Name: MICKELL, Darren
Date of Service: 8/9/14

PHYSICAL EXAMINATION:

This is a well-developed, well-nourished male in no distress. The general physical examination was remarkable for normal cervical spine range of motion. Lumbar spine range of motion was full as well, though with discomfort, especially in extension. Cardiac tones were normal with a non-displaced PMI. Breath sounds were normal at the lung bases bilaterally. There was no cervical lymphadenopathy. Neck circumference measured 18.5 inches. The claimant stated his height as 6 feet 5 inches and his weight as 270 pounds, and his appearance was consistent with this. Blood pressure measured 104/80 with a pulse of 68 beats per minute.

NEUROLOGIC EXAMINATION:

Mental Status: The examinee was alert and fully oriented with no defects of speech or cognition, and gave a coherent history. He appeared to be depressed, though he was able to make eye contact most of the time. There were no obvious hallucinations or delusions, and no significant preoccupations. The claimant made no language errors. He scored 24 of a possible 30 points on the Montréal Cognitive Assessment (MOCA) test, a slightly below normal score.

Cranial Nerves: The claimant was able to detect and identify the odor of coffee through either nostril. The visual fields were normal to confrontation. The measured visual acuity, using a near card, was 20/20 in both eyes. On color vision testing, he misidentified about 25% of the Ishihara color plates with either eye. The pupils were equal and reactive to light with no relative afferent pupillary defect (RAPD). The ocular fundi were normal. The extra-ocular movements were full without nystagmus or internuclear ophthalmoplegia (INO). Sensory and motor examinations of the face were unremarkable. The tongue and palate were in the midline. Shoulder shrug was normal bilaterally.

Motor: The tone was normal in all four extremities. Adventitious movements, atrophy and fasciculations were not seen. Muscle strength and coordination were normal proximally and distally in all four extremities. The deep tendon reflexes were 2+ and symmetric in the upper extremities, 2++ at the knees, and 1+ at the ankles. The toes were down-going bilaterally to plantar stimulation.

Sensory: Responses to light touch stimulation were normal in the upper limbs. Graphesthesia was impaired at both palms, even after multiple trials. Light touch sensation was intact in the lower extremities. Temperature sensation was normal at the feet. Vibratory thresholds were abnormal at the toes.

Coordination/Gait: Finger-nose-finger testing was performed well bilaterally. Casual and tandem gaits were normal.

Claimant Name: MICKELL, Darren
Date of Service: 8/9/14

REVIEW OF PERTINENT MEDICAL RECORDS:

- 9/15/92 and others In 1992 the claimant tested negative for syphilis. In 1993 and again in 1994 he tested positive. There is evidence of treatment in 1993 with intramuscular Bicillin. A follow-up RPR in 2000 was negative. This is important, if a progressive dementing illness is being considered, as neurosyphilis is one of the few treatable causes of a progressive cognitive decline. Given the negative RPR in 2000, it is unlikely but not completely impossible that the claimant has syphilis.
- 4/8/14 and others In the spring of 2014 the claimant underwent a neuropsychological examination by Dr. Mark Todd (Ph.D.). A report summarizing the results is reviewed. Complaints include slow progressive memory changes, word finding and language comprehension difficulties, irritability, personality changes, anxiety and depression with episodes of suicidal feelings, and headaches. The report points out that the claimant has never been diagnosed with concussion. Validity testing was not completely within acceptable limits, as there is one validity test that was abnormal; nonetheless, the examining psychologist believes that a valid test was obtained. Almost all of the cognitive parameters measured fell in the average or low average range, consistent with premorbid predictions of function. Two parameters, processing speed and visual short-term memory, were considered borderline. There were no results that fell in his severely abnormal range. MMPI revealed significant depression, anxiety, and worry. Dr. Todd notes at the end, "Certainly his mood symptoms are a prominent problem that could contribute to and may even account for his difficulties. The concern would be, however, that his problems may also be more reflective of a significant cognitive disorder related to a potential history of multiple concussive injuries."

Claimant Name: MICKELL, Darren
Date of Service: 8/9/14

FINAL CLINICAL IMPRESSION:

1. CHRONIC HEADACHE DISORDER WITH MILD HEADACHE BURDEN.
2. VERY MILD COGNITIVE IMPAIRMENT.
3. SIGNIFICANT DEPRESSION AND ANXIETY DISORDER WHICH EITHER ACCOUNTS FOR OR CONTRIBUTES TO #2.
4. SYPHILIS, TREATED.

Claimant Name: MICKELL, Darren
Date of Service: 8/9/14

QUALIFICATIONS:

I am currently licensed to practice Medicine in the State of Georgia. I am certified in Neurology by the American Board of Psychiatry and Neurology. A copy of my *Curriculum Vitae* is available upon request.

DISCLOSURE STATEMENTS:

The Independent Medical Examination process was explained to the examinee. The examinee understands that no patient/treating physician relationship was established, that the information exchanged during the interview and examination are not confidential, and that a written report will be issued to the above-referenced client. Informed, written consent was obtained from the examinee to proceed with the IME, including both the interview and physical examination portions of the process. The examinee agreed prior to commencement of the interview and examination to report any problems with the process to the examining physician. No such problems were reported. The entire process, including record review, interview, examination, formulation, and document preparation took approximately 2 hours.

The above analysis is based upon the information available to me at this time, including the history provided by the claimant, the medical records and test reports provided, the results of pain status inventories, and the physical findings obtained during careful general and neurological examination. It is assumed that the information provided to me is correct. If more information is provided to me at a later date, an appended report may be requested. Such additional information may or may not change the ultimate conclusions expressed herein.

The opinions expressed in this report are based upon a reasonable degree of medical probability.

Any recommendations for further care are provided as general guidance, and do not constitute medical orders or referrals.

I declare under penalty of perjury that the information contained in this report is true and correct, to the best of my knowledge and belief, except as to information I have received from others. The foregoing was signed in Fulton County, State of Georgia, on August 21, 2014.



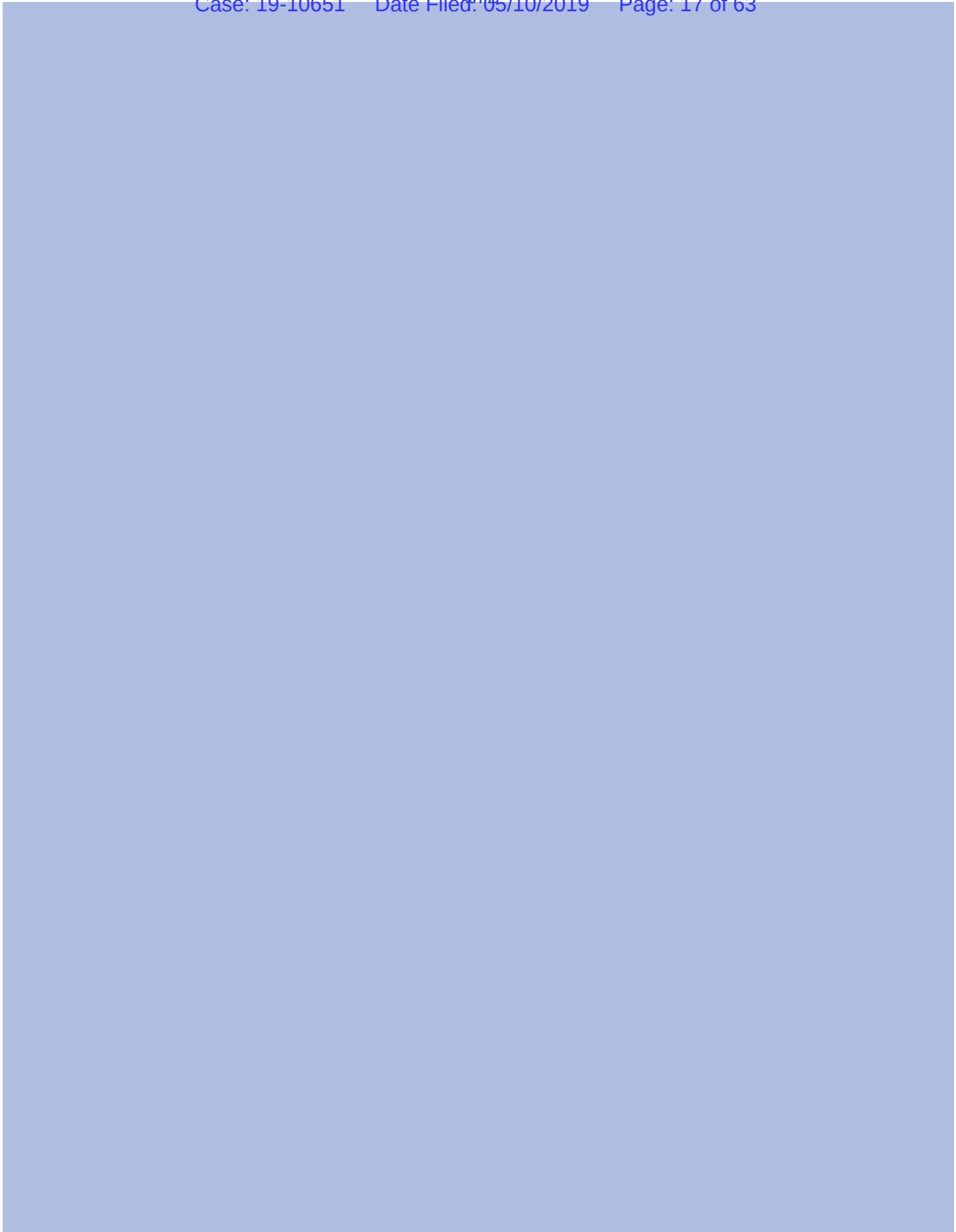
Barry J. McCasland, MD

MONTREAL COGNITIVE ASSESSMENT (MOCA)
Version 7.1 Original Version

NI: Mickell, Daven
Education: College Date of birth: 70
Sex: M DATE: 8/19/14

VISUOSPATIAL / EXECUTIVE		POINTS																				
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NAMING 		[] [] []	3/3																			
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LANGUAGE Repeat: I only know that John is the one to help today. [] The cat always hid under the couch when dogs were in the room. []		[] []	2/2																			
Fluency / Name maximum number of words in one minute that begin with the letter F [] 11 (N ≥ 11 words)		[] 11 (N ≥ 11 words)	1/1																			
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© Z.Nasreddine MD Administered by: _____		www.mocatest.org Normal $\geq 26 / 30$	TOTAL 24/30 Add 1 point if ≤ 12 yr edu																			

MICKELL-0894



MICKELL-0895

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410-685-5069 • 800-638-3186 • Fax 410-783-0041**RECEIVED****Total & Permanent Disability Benefits**

AUG 28 2014

PHYSICIAN'S REPORT FORM**NFL PLAYER BENEFITS**

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To Be Completed By Plan Office:

1. Player's Name Darren Mickell Date of Birth /1970
2. Address 9250 Chelsea Dr, Miramar, FL 33025
3. Credited Seasons 1992-1997, 1999-2000 Telephone (786)277-5788 M

4. When did you first examine the player? 8/20/2014
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6. What is the nature of the impairment? COGNITION
PSYCHOLOGICAL HEALTH
7. Impairment Information (attach additional sheets if necessary)

Impairment to:

Impairment results from:

Has the impairment persisted or is it expected to persist for at least 12 months from the date of its occurrence?

BRAIN	<input type="checkbox"/> Illness <input type="checkbox"/> Injury <input checked="" type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Cannot be determined
	<input type="checkbox"/> Illness <input type="checkbox"/> Injury <input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Cannot be determined
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	<input type="checkbox"/> Illness <input type="checkbox"/> Injury <input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Cannot be determined

Stephen N. Macciocchi, PhD., A
(Neutral Neuro-Psychologist)

MICKELL-0896

A1012

Physician's Report for **Darren Mickell**
Page 2

8. In your opinion, is the patient totally disabled to the extent that he is substantially unable to engage in any occupation for remuneration or profit?

Yes _____

No X

NOT FROM COGNITIVE PERSPECTIVE

If you checked Yes:

- Specify the medical conditions and how these conditions prevent the Player from working.

- How long do you estimate the Player will be unable to be gainfully employed at any occupation? _____

If you checked No:

- In what type of employment can he engage?

HE CURRENTLY WKS WITH FRIEND 3 DAYS PER WEEK - NOT COGNITIVELY DEMANDING

9. Additional remarks by physician

PLAYER MAY HAVE MEDICAL IMPAIRMENT AND PSYCHIATRIC CONDITIONS WHICH MERIT ASSESSMENT

Please attach the required Medical Report with this form.

Physician's Name (typed or printed): Stephen N. Macciocchi, PhD., ABPP

Address Peachtree Dunwoody Pavilion

5775 Peachtree Dunwoody Road

Building C, Suite 200

Atlanta, GA 30342

Telephone (404)556-0752

I certify that I have personally examined this Player and have personally reviewed any and all records of this Player given to me, and have personally reviewed the attached narrative reports. I also certify that my ratings and comments reflect my best professional judgment, and that I am not biased toward or against this Player.

Signature

[Handwritten Signature]

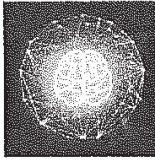
Examination Date

8/20/2014

Mail completed form with your narrative report to Rose Mary Eves at the Bert Bell/Pete Rozelle NFL Player Retirement Plan, 200 St. Paul Place, Suite 2420, Baltimore, MD 21202-2040.

MICKELL-0897

A1013

**ATLANTA NEUROPSYCHOLOGY LLC**

Stephen N. Macciocchi, Ph.D. ABPP
Board Certified in Clinical Neuropsychology
American Board of Clinical Neuropsychology
P.O. Box 550045
Atlanta, Georgia 30355

NEUROPSYCHOLOGICAL ASSESSMENT

NAME:	Darren Mickell
AGE:	44
EDUCATION:	15
PSYCHOMETRICIAN:	Jill Dermeyer, MA
ASSESSMENT DATE:	8/20/2014
REFERRAL SOURCE:	Paul Scott: NFLPBP

REFERRAL INFORMATION:

Darren Mickell is applying for NFL Total and Permanent (TP) disability benefits secondary to multiple orthopedic injuries as well as "headaches, concentration problems, word loss, focus issues and processing issues", reportedly sustained while playing in the NFL. The NFL Player Benefits Program (NFLPBP) requested an assessment in order to document Mr. Mickell's cognitive and psychological functioning in the context of his self-reported health problems.

Prior to the examination, the NFLPBP forwarded Mr. Mickell's NFL TP benefits application and medical records documenting orthopedic injuries, including an IME completed by Craig Lichtblau, M. D. on 3/31/2014. Also included was a neuropsychological assessment completed by Mark Todd, Ph.D. in April 2014. Prior to the examination, Mr. Mickell's attorney Mindy Chmielarz forwarded medical records, which also contained both examinations cited above. Information related to Mr. Mickell's musculoskeletal injuries and associated pain as well as his history of concussions and cognitive problems was also obtained via interview with Mr. Mickell during the examination.

The current examination was focused on Mr. Mickell's neuropsychological functioning. Information extracted from medical records focused on injuries and risk factors for cognitive and psychological health problems. Mr. Mickell's physical injuries and physical symptoms are beyond the scope of the current assessment and the expertise of the current examiner, except to the extent his physical injuries and symptoms affect his psychological and/or cognitive functioning. Persons interested in comprehensive documentation of Mr. Mickell's medical problems and associated treatment should consult primary medical records.

Prior to beginning the examination, Mr. Mickell was educated regarding the nature, purpose and conditions of the current assessment. Mr. Mickell was informed orally and in writing that optimal effort and engagement in testing during the examination was critical for obtaining valid neuropsychological test results. Mr. Mickell was also informed he would not receive a copy of his report from the examiner and he was encouraged to consult the NFLPBP program to determine opportunities for obtaining a report and being provided feedback on his assessment. Mr. Mickell evidenced understanding of the nature, purpose and conditions of the assessment and he agreed verbally and in writing to have a summary report of test findings forwarded to Paul Scott at the NFLPBP.

MICKELL-0898

NAME: Mickell, D.

HISTORY:

Medical:

According to Mr. Mickell, he has no history of significant childhood, adolescent or adult medical illnesses, other than injuries sustained while playing in the NFL.

Mr. Mickell reported sustaining a number of musculoskeletal injuries during his career in the NFL, which are documented in his benefits application and medical records (see IME by Craig Lichtblau, M.D.). Mr. Mickell reports currently experiencing pain in multiple sites, especially his knees, back and hips. He takes OTC anti-inflammatory medication and intermittently is prescribed oxycontin for pain. Mr. Mickell reported his orthopedic IME completed as part of the NFLBP was "very short, like a sideline examination" and did not address his physical injuries adequately. Dr. Lichtblau concluded that Mr. Mickell was "unable to maintain gainful employment" secondary to chronic pain.

Neurological:

According to Mr. Mickell, he had no history of cognitive-developmental disorder in childhood. He also denied a history of neurological trauma-disease in childhood, adolescence and adulthood, except for concussive injuries sustained while playing in the NFL.

Mr. Mickell reported sustaining 2 concussions that he could recall. These injuries occurred during his 2nd and 3rd year in Kansas City. He reported experiencing confusion and headaches and being removed from practice for several days. He also sustained several head contact injuries that resulted in him sitting out several plays.

Mr. Mickell also reported experiencing numerous head contact injuries during his time in the NFL that resulted in brief changes in mental status and visual processing (seeing stars). Mr. Mickell reported these injuries were frequent and that he believed them to be a normal consequence of contact. He did not seek medical attention for any of these head contact injuries or the symptoms following his injuries.

Psychiatric:

Mr. Mickell denied a history of past psychiatric diagnoses, but he reported a period of significant weight loss (30 lbs) and apathy. Mr. Mickell reported that at times he feels depressed, but has not consulted a psychiatric healthcare professional until recently when he was examined by Dr. Todd. He reported he is able to consult with Dr. Todd regarding his psychological health via an NFL sponsored program.

Mr. Mickell also reported experiencing anxiety, which appeared to reflect panic symptoms such as increased heart rate, fears of dying and general anxiety that last for brief periods of time and resolve secondary to going outside.

Dr. Todd reported Mr. Mickell was experiencing "marked anxiety and depression" based on the MMPI-IRF, a short form of the MMPI. Dr. Todd reported collateral evidence of depression based on Mr. Mickell's self-report and his functioning at home.

Mr. Mickell's had a history of cocaine use, which resulted in him being suspended from the NFL for one year. He denied using cocaine after his one year suspension from the NFL. Mr. Mickell reported using marijuana 3-4 times per week to treat his pain. He reported THC is effective in reducing his pain to manageable levels.

NAME: Mickell, D.

Neuropsychological:

Dr. Todd completed a neuropsychological examination over 3 sessions in April 2014. His report summarizes Mr. Mickell's performance. According to Dr. Todd, his examination "provided evidence of a mild cognitive disorder" (see page 14). Dr. Todd did not discuss how he reached his clinical conclusion given that many test scores were average and more proficient than Mr. Mickell's general level of intellectual functioning. There was no discussion of base rates of expected low scores given the number of tests administered or Mr. Mickell's level of intellectual functioning. In addition, Dr. Todd reported Mr. Mickell's "motivation" [effort] during testing was good, but he did not provide test scores supporting optimal effort. Finally, Dr. Todd made a number of relevant recommendations regarding Mr. Mickell's physical and psychological health (see page 14-15).

Educational-Psychosocial-Occupational:

Mr. Mickell was born in Miami, Florida and he attended the University of Florida. Mr. Mickell left college before graduation and had an 8 year career in the NFL playing for several teams. He retired from the NFL in 2000. Since retiring from the NFL, Mr. Mickell has worked in a warehouse and his most recent job involves working with a friend supplying video games to various establishments, which he does several days per week. He currently resides with his great grandmother, girlfriend and daughter in Miramar Florida.

TESTS ADMINISTERED:

In order to assess Mr. Mickell' current neuropsychological and psychological functioning, a number of techniques were administered including tests assessing general intellectual skills, problem solving, attention - concentration, language skills, and memory functions. Performance validity testing and a psychological assessment were also administered.

Test interpretation is based on normative data contained in manuals for each test administered unless the test is a component of the co-normed data base published by Heaton, Miller, Taylor, and Grant (2004). Performance descriptors used in the report are based on T Scores, which are standard scores described in the table described below. These performance descriptors may be found in various sources including Heaton, Miller, Taylor and Grant (2004) and Strauss, Sherman and Spreen (2006).

T SCORE	CLASSIFICATION	T SCORE	CLASSIFICATION
70-77	VERY SUPERIOR	35-39	MILD IMPAIRMENT
64-69	SUPERIOR	30-34	MILD-MODERATE IMPAIRMENT
56-63	HIGH AVERAGE	25-29	MODERATE
45-55	AVERAGE	20-24	MODERATE-SEVERE IMPAIRMENT
40-44	LOW AVERAGE	<20	SEVERE IMPAIRMENT

Wechsler Adult Intelligence Scale - IV (WAIS-IV)

Test of Pre-morbid Functioning (TOPF)

Wisconsin Card Sorting Test (WCST)

Delis-Kaplan (DKEFS)

Trail Making

Verbal Fluency

Color-Word Interference

NAME: Mickell, D.

Grooved Pegboard Test (GPT)
Boston Naming Test (BNT)
Wechsler Memory Scale - IV (WMS-IV)
Logical Memory I and II
California Verbal Learning Test - II (CVLT-II)
Performance Validity Tests
Minnesota Multiphasic Personality Inventory-2/RF (MMPI-2RF)
Beck Depression Inventory (BDI)
Beck Anxiety Inventory (BAI)
Clinical Interview

TEST RESULTS:

Behavioral Observations and Clinical Interview:

During testing, Mr. Mickell was easily engaged, friendly and appropriate. He appeared relaxed and cooperated fully, but was somewhat apathetic. He worked at a medium pace and generally in a planned and deliberate manner. He persisted on difficult tasks. He did not overtly respond to either success or failure on test items. He increased his effort in response to encouragement.

During interview, Mr. Mickell was alert, oriented, and cooperative. His affect was normal in range and appropriate to content. Mr. Mickell had an adequate understanding of his current medical condition as reflected in his ability to discuss his injuries and relate his current attending physicians' recommendations.

In terms of current cognitive complaints, Mr. Mickell reported having memory and concentration problems. He described forgetting normal responsibilities and having trouble recalling information in day to day activities. He forgets where is going at times. He also misplaces things and reported his thinking is "off". Mr. Mickell also reported having anger problems and being disengaged from his friends and family.

Mr. Mickell did not evidence any significant neurobehavioral symptoms such as disinhibition, aggression, emotional lability or apathy. He also did not evidence any significant neuropsychiatric symptoms such as hallucinations, delusions or compulsions, but he was tearful when describing his inability to function physically and his concerns about his neurological health.

Performance Validity:

Mr. Mickell's performance was impaired on all 3 trials of 2 free standing performance validity measures (6 impaired scores). His performance was also impaired on 1 embedded validity measure, but unimpaired on another. Overall, his effort during the current examination as indexed by validity metrics was impaired to the point that his test performance level would be negatively impacted, particularly on memory tests.

Intelligence:

Mr. Mickell's Verbal Comprehension Index on the Wechsler Adult Intelligence Scale - IV was low average (87). Mr. Mickell's Perceptual Reasoning Index was average (90).

Mr. Mickell's Full Scale IQ Score on the WAIS-IV was low average (83). His performance on the WAIS-IV was generally consistent with, but less proficient than his predicted Full Scale IQ Score estimate based on the Test of Pre-Morbid Functioning (89).

NAME: Mickell, D.

Executive Functions:

Mr. Mickell's attribute identification and set shifting on the Wisconsin Card Sorting Test was uniformly average to high average (Errors/T=53; Perseverative Responses/T=57; Perseverative Errors/ T=57; Non-Perseverative Errors/T=48; and Categories (6) T=50+).

Mr. Mickell's performance on the D-KEFS Trail Making Test ranged from low average to average (Visual Scanning/T=43; Letter-Number Switching/T=43) to average (Number-Sequencing/T=53; Letter Sequencing/T=50).

Mr. Mickell's performance on the D-KEFS Color-Word Test was average to high average (Color Naming/T=56; Word Reading/T=46; Inhibition/T=50 and Inhibition-Switching/T=46).

Attention-Concentration:

Mr. Mickell's performance on the Wechsler Adult Intelligence Scale - IV documented a Working Memory Index that fell in the mildly impaired range (74). In contrast, his Processing Speed Index was average (92).

Motor Functions:

Mr. Mickell's motor speed on the D-KEFS was average (T=53). Mr. Mickell's dominant (right) fine motor speed and dexterity on the Grooved Pegboard Test was mildly impaired (T=35). Mr. Mickell's non-dominant fine motor speed and dexterity was mildly-moderately impaired (T=34).

Language Functions:

Mr. Mickell's speech was fluent with no evidence of paraphasias or dysnomia. His narrative and discourse was logical and coherent. His prosody was normal. Mr. Mickell's confrontation Naming on the Boston Naming Test was low average (T=43). His verbal fluency on the D-KEFS was generally average (Category Switching/T=46; Category Fluency/T=43 and Letter Fluency/T=46).

Memory Functions:

Mr. Mickell's story memory performance on the Wechsler Memory Scale - IV was mildly-moderately impaired following a short delay (T=33) and moderately impaired following a long delay (T=22).

Mr. Mickell's verbal learning over trials on the California Verbal Learning Test-II was low average (T=40). His short delayed spontaneous recall was mildly impaired (T=35). His long delayed spontaneous recall was low average (T=40).

Psychological Functioning:

Mr. Mickell's responses on the MMPI-2-RF revealed an elevation \geq T=80 on 4 validity scales (Infrequent Responses/T=97; Infrequent Somatic Responses/T=83; Symptom Validity/T=92 and Response Bias Scale/ T=105). Scales assessing reliability of responding (VRIN/T=43 and TRIN/T=57) were not elevated.

In terms of Higher Order, Restructured Clinical and Somatic-Cognitive scales, Mr. Mickell had 6 elevations equal to or $>$ T=80 (Somatic Complaints Scale/T=90; Malaise/T=81; Neurological Complaints/T=96; Head Pain Complaints/T=85; Cognitive Complaints/T=91 and Anxiety/T=80).

On the BDI Mr. Mickell's score (29) was consistent with severe depressive symptoms. Mr. Mickell also reported symptoms of severe anxiety on the Beck Anxiety Inventory (30).

NAME: Mickell, D.

According to MMPI-2RF interpretive guidelines (Ben-Porath, 2012), when there is no evidence of inconsistent responding (elevated VRIN-r and TRIN-r), Mr. Mickell's elevations on 4 validity scales makes interpretation of Higher Order, Restructured and Somatic-Cognitive Scales difficult due to symptom over-reporting. In the absence of symptom validity and response bias concerns, Mr. Mickell's MMPI-2-RF, BDI and BAI primarily reflect concerns about his physical and neurological health, as well as anxiety and depression, which is consistent with his self-report regarding concerns about his cognitive and physical functioning.

IMPRESSION:

Darren Mickell has a history of chronic pain, which is a risk factor for cognitive inefficiency. He also reports symptoms of anxiety and depressive disorders, which are also risk factors for cognitive inefficiency, although the severity his psychological health disorders are difficult to determine due to symptom over-reporting. Nonetheless, he has a self-reported history of significant weight loss, apathy, social isolation and panic symptoms. Whether his use of THC for pain relief has had an impact on his cognitive functioning is not entirely clear since research has not definitively shown that THC use has a chronic, deleterious effect on cognition.

Mr. Mickell also has a history of what he reported to be at least 2 concussions and he reportedly experienced numerous other head contact injuries during his time in the NFL that resulted in transitory changes in mental status. The long term impact of multiple concussive injuries on cognitive functioning has not been extensively studied, despite recent, appropriate attention to the effects of these injuries. Consequently, based on existing science, determining the effect head contact injuries have on individual NFL players cognitive functioning is difficult if not impossible to quantify, except when there is evidence of a reliable decline in cognitive functioning over a sustained period of time documented by valid neurocognitive test performance. These findings would need to be obtained in the absence of other more common disorders known to have a negative impact on cognition such as pain, sleep and psychiatric disorders as well as unreliable test findings due to suboptimal effort or malingering. In any case, media reporting of single case studies and other anecdotal evidence regarding the effect of multiple concussions has raised concerns about neurological health among many athletes, not just NFL players. Consequently, NFL players are experiencing reasonable anxiety regarding their neurological health. Anxiety is known to negatively impact cognitive efficiency and result in the subjective experience of cognitive dysfunction.

For instance, in terms of psychological health, Mr. Mickell reports symptoms of major depression and panic disorder in part related to his concerns about his health. He is considerably worried about his physical and neurological health. He reports changes in behavior and mood that have affected his everyday functioning. While there is self-report evidence Mr. Mickell is experiencing symptoms of major depression, and panic disorder, his MMPI-2RF is difficult to interpret due to symptom over-reporting on validity metrics, which raises concerns about the reliability of any self-report measures that do not have embedded symptom validity scales such as the BDI and BAI. Consequently, even though Mr. Mickell reports numerous clinically suggestive psychological health problems, the severity of his psychological health problems and implications for his ability to engage in competitive employment remains to be determined.

In terms of cognitive complaints, Mr. Mickell's scores on performance validity measures were impaired. Impaired scores on performance validity metrics have been shown to be strongly associated with lowered neuropsychological test performance. In other words, research has shown that persons who evidence impaired scores on freestanding performance validity measures score much lower on neuropsychological tests compared to cohorts with similar medical histories who perform well on performance validity tests (above empirically established

NAME: Mickell, D.

cutoffs). Consequently, Mr. Mickell is most likely functioning at a higher cognitive level than was documented during his current examination. Nevertheless, Mr. Mickell did not evidence other signs of performance invalidity, such as pervasively impaired neuropsychological test performance that deviates from known patterns of brain functioning, other than in the area of memory functioning.

In other words, despite concerns about performance validity during the current assessment, Mr. Mickell did not evidence an abnormal number of low scores. Presuming Mr. Mickell's predicted Full Scale IQ on the TOPF is accurate, research has shown that 78% of persons with low average IQ in standardization samples have 5 or more scores fall below T=40 when administered neuropsychological batteries with 36 scores. The current test battery has approximately 60 scores and Mr. Mickell had 6 scores that fell below T=40, which is not psychometrically or statistically unexpected, especially given concerns about performance validity. More importantly, when focusing on skills necessary for day to day and employment functioning such as processing speed and executive skills, Mr. Mickell performed in the average to high average range.

In contrast, Mr. Mickell's memory test performance was less proficient during the current examination and more impaired relative to his performance 4 months ago. When comparing Mr. Mickell's current memory test scores with his previous examination completed 4 months ago, his memory test performance declined significantly on story memory tasks, but improved on list learning tasks. His decline in story memory over such a brief period of time is most likely due to performance validity problems and/or exacerbation of psychiatric symptomatology.

In summary, there are questions regarding the reliability and validity of Mr. Mickell's neurocognitive and psychological health test findings. Despite concerns about the reliability and validity of neurocognitive test scores, Mr. Mickell did not evidence an abnormal number of impaired scores compared to expectations derived from normative data bases. He did evidence a decline in memory test performance over the past 4 months, which cannot be explained by declining neurological health, but may be due to psychiatric problems and/or suboptimal engagement on memory tests during the current examination. Even when considering validity issues, there is no current psychometric evidence Mr. Mickell cannot engage in gainful employment solely from a cognitive perspective. Whether Mr. Mickell's medical problems such as chronic pain or a psychiatric disorder, most likely major depression and panic disorder, would prevent him from working cannot be definitively determined by the current examination. There is clinically suggestive evidence he may have a major depressive disorder and a panic disorder, which could impair his ability to secure and maintain successful employment. Consequently, Mr. Mickell will need formal medical and psychiatric examinations to assess the reliability and significance of his physical/pain disorders and psychiatric condition. If obtained, a psychiatric examination must consider symptom validity and response bias in the context of any self-reported symptoms.

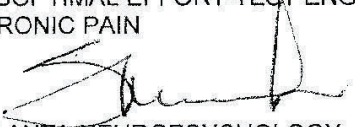
DIAGNOSTIC CONSIDERATIONS:

R/O MAJOR DEPRESSION, MILD - MODERATE (DSM-V: 296.21-296.22)

R/O PANIC DISORDER (DSM-V: 300.01)

SUBOPTIMAL EFFORT-TEST ENGAGEMENT

CHRONIC PAIN


ATLANTA NEUROPSYCHOLOGY
STEPHEN MACCIOCCHI, PH.D. ABPP, MEMBER

Page 7 of 7

MICKELL-0904

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ATL COMP NEUROPSYCH

PAGE 02/20

NFL NEUROPSYCHOLOGICAL TEST BATTERY

Name: Darren MickellDate: 8/20/2014

TEST	Raw Score	T Score	%ile	Interpretation
Pre-morbid Intellectual Functioning				
TCPI Estimate IQ	29	42	23	Low Average
EFFORT				
CVLT-II Forced Choice Recognition (#)	93.8	n/a	n/a	
MSVT (% correct IR, DR, CNS)	60, 65, 65	n/a	n/a	Below Expectations
Reliable Digit Span (#)	6	n/a	n/a	Below Expectations
Test of Memory Malingering (%correct)	60	n/a		Below Expectations
Intellectual Functioning				
WAIS-IV FSIQ	83	38	13	Mild
WAIS-IV VCI	87	41	19	Low Average
WAIS-IV PRI	90	43	25	Low Average
WAIS-IV WMI	74	33	4	Mild/Moderate
WAIS-IV PSI	92	44	30	Low Average
Vocabulary	29	43	25	Low Average
Information	8	16	40	Low Average
Similarities	21	25	43	Low Average
Arithmetic	13	37	46	Average
Digit Span	12	22	0.4	Moderate/Severe
Block Design	43	50	50	Average
Visual Puzzles	10	16	40	Low Average
Coding	60	25	43	Low Average
Matrix Reasoning	14	25	43	Low Average
Symbol Search	31	37	46	Average
LANGUAGE				
Boston Naming Test	7	43	24	Low Average
DKEFS Letter Fluency	34	46	37	Average
Category Fluency	26	43	25	Low Average

08/21/2014 02:11 7709334135

ATL COMP NEUROPSYCH

PAGE 03/20

TEST	Raw Score	T Score	%ile	Interpretation
Category Switching Total Correct	13	46	37	Average
ATTENTION				
WAIS IV Digit Span	2	22	0.4	Moderate/Severe
WMS IV Symbol Span	14	36	9	Mild
MOTOR SPEED				
WAIS IV PSI	92	44	30	Low Average
GP Dominant Hand	102	35	7	Mild
GP Non Dominant Hand	112	34	5	Mild/Moderate
DKEFS Motor Speed	27	53	63	Average
VISUAL PERCEPTUAL SKILLS				
WMS IV Visual Reproduction Copy	Not Administered			
Rey Copy	Not Administered			
WAIS IV Block Design	10	50	50	Average
VERBAL MEMORY/LEARNING				
CVLT II Trial 1	5	-1.0	16	Low Average
Trial 5	9	-1.5	6	Mild/Moderate
Sum Trials 1-5	39	40	16	Low Average
Short Delay Free Recall	6	-1.5	6	Mild/Moderate
Long Delay Free Recall	9	-1.0	16	Low Average
Learning Slope	1.1	-0.5	30	Low Average
Repetitions	7	1.0	84	High Average
Intrusions	6	1.0	84	High Average
WMS-IV Logical Memory I	14	33	5	Mild/Moderate
Logical Memory II	9	22	2	Moderate/Severe
VISUAL MEMORY				
WMS IV Visual Reproduction I				
Visual Reproduction II				
Visual Reproduction Recognition				

08/21/2014 02:11 7709334135

ATL COMP NEUROPSYCH

PAGE 04/20

TEST		Raw Score	T Score	%ile	Interpretation
EXECUTIVE FUNCTIONING					
DKEFS	Visual Scanning	38	43	25	Low Average
	Number Sequencing	30	53	63	Average
	Letter Sequencing	34	50	50	Average
	Number Letter Switching	102	43	25	Low Average
	Motor Speed	27	53	63	Average
WCST	Total Errors	13	53	62	Average
	Perseverative Responses	4	57	76	High Average
	Perseverative Errors	4	57	76	High Average
	Non-Perseverative Errors	9	48	42	Average
	Conceptual Level responses	82	n/a	n/a	n/a
	Categories Completed (#)	6	n/a	>16	Average
	Trials to 1 st Category (#)	11	n/a	>16	Average
	Failure to Maintain Set (#)	2	n/a	6-10	Mild/Moderate
	Learning To Learn (#)	-1.34	n/a	>16	Average
DKEFS	Color Naming	25	56	75	High Average
	Word Reading	23	46	34	Average
	Inhibition	56	10	50	Average
	Inhibition/Switching	65	46	37	Average
WAIS IV	Similarities	8	43	25	Low Average
	Matrix Reasoning	14	43	25	Low Average
PERSONALITY/MOOD					
		29			Severe
BDI		30			Severe
BAI					

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ATL COMP NEUROPSYCH

PAGE 14/20

MMPI-2-RF Score Report
08/20/2014, Page 7ID:NFL
Darren Mikell**MMPI-2-RF T SCORES (BY DOMAIN)****PROTOCOL VALIDITY**

Content Non-Responsiveness	0	43	57 F
	CNS	VRIN-r	TRIN-r
Over-Reporting	97	59	83 92 105
	F-r	Fp-r	FB FBS-r RBS
Under-Reporting	52	42	
	L-r	K-r	

SUBSTANTIVE SCALES

Somatic/Cognitive Dysfunction	90	81	64	85	96	91
	RC1	MLS	GIC	HPC	NUC	COG
Emotional Dysfunction	76	77	45	60	65	64
	EID	RCd	SUI	HLP	SFD	NFC
		73	70			
		RC2	INTR-r			
		65	73	80	73	63
		RC7	STW	AXY	ANT	BRF
						54 80
						MSF NEGE-r
Thought Dysfunction	67	70				
	THD	RC6				
		76				
		RC8				
		66				
		PSYC-r				
Behavioral Dysfunction	55	57	57	61		
	BXD	RC4	JCP	SUB		
		48	56	48	41	59
		RC9	AGG	ACT	AGGR-r	DISC-r
Interpersonal Functioning	58	43	62	65	57	44
	FML	RC3	IPP	SAV	SHY	DSF
Interests	33	52				
	AES	MEC				

Note. This information is provided to facilitate interpretation following the recommended structure for MMPI-2-RF interpretation in Chapter 5 of the *MMPI-2-RF Manual for Administration, Scoring, and Interpretation*, which provides details in the text and an outline in Table 5-1.

MICKELL-0908

A1024

Miscellaneous additional material - September 2014 DICC

MICKELL-0909

Board Actions for Darren Mickell

Meeting Date Type	Case Type	Issue	Decision	Effective Date/Action
05-15-14.R	TPX	APA	Tabled	pending neutral evaluation - Remand to DICC
09-23-13.R	TPX	APL	Denied	currently employed

SUMMARY

Total Cases: 2

Case Types- DIS/TPX: 1

Issues- APA: 1

Decisions- Tabled: 1

Issues: APL- Application CON- Continuation EDT- Eff. Date RCL- Reclassification EED- Earlier Eff. Date MSC- Miscellaneous
 APA- APL Appeal COA- CON Appeal EDA- EDT Appeal RCA- RCL Appeal EEA- EED Appeal MSA- MSC Appeal
 09/04/14

MICKELL-0910

PLAYER: **Darren Mickell** SSN4: **-1926**
DOB: **[REDACTED] 1970**

ISSUE: Remand of Appeal for **Total and Permanent** Disability Benefits to Disability Initial Claims Committee

FACTS: **Eight (8) Credited Seasons: 1992-1997, 1999-2000**
Sum of Benefit Credits: **\$2,720.00**
09/23/2013 E-Ballot: T&P Disability application denied: currently employed
05/15/2014 RBM Meeting: T&P Disability appeal tabled: pending neutral evaluation - Remand to DICC

ATTACHMENTS:

- 1) Board Action Schedule
- 2) Physician's Report Form and Narrative dated 08/20/2014
Stephen N. Macciocchi, Ph.D. (Neutral Neuro-Psychologist)
- 3) Physician's Report Form and Narrative dated 08/19/2014
Barry J. McCasland, M.D. (Neutral Neurologist)
- 4) Physician's Report Form and Narrative dated 06/17/2014
Chaim Arlosoroff, M.D. (Neutral Orthopaedist)
- 5) Plan Counsel Letters dated 07/25/2014, 07/17/2014, 07/15/2014,
06/19/2014, and 06/05/2014
- 6) Letters dated 07/17/2014, 06/20/2014, 06/04/2014, and 05/08/2014
Mindy L. Chmielarz (Player's Attorney)
- 7) Letters dated 06/20/2014 and 06/16/2014
Alicia Paulino-Grisham (Player's Attorney)
- 8) Letter dated 06/30/2014 with attachments
Mindy L. Chmielarz (Player's Attorney)
- 9) Letter dated 06/17/2014 with attachments
Mindy L. Chmielarz (Player's Attorney)
- 10) Cover Sheet from the 05/15/2014 Retirement Board Meeting with
attachments

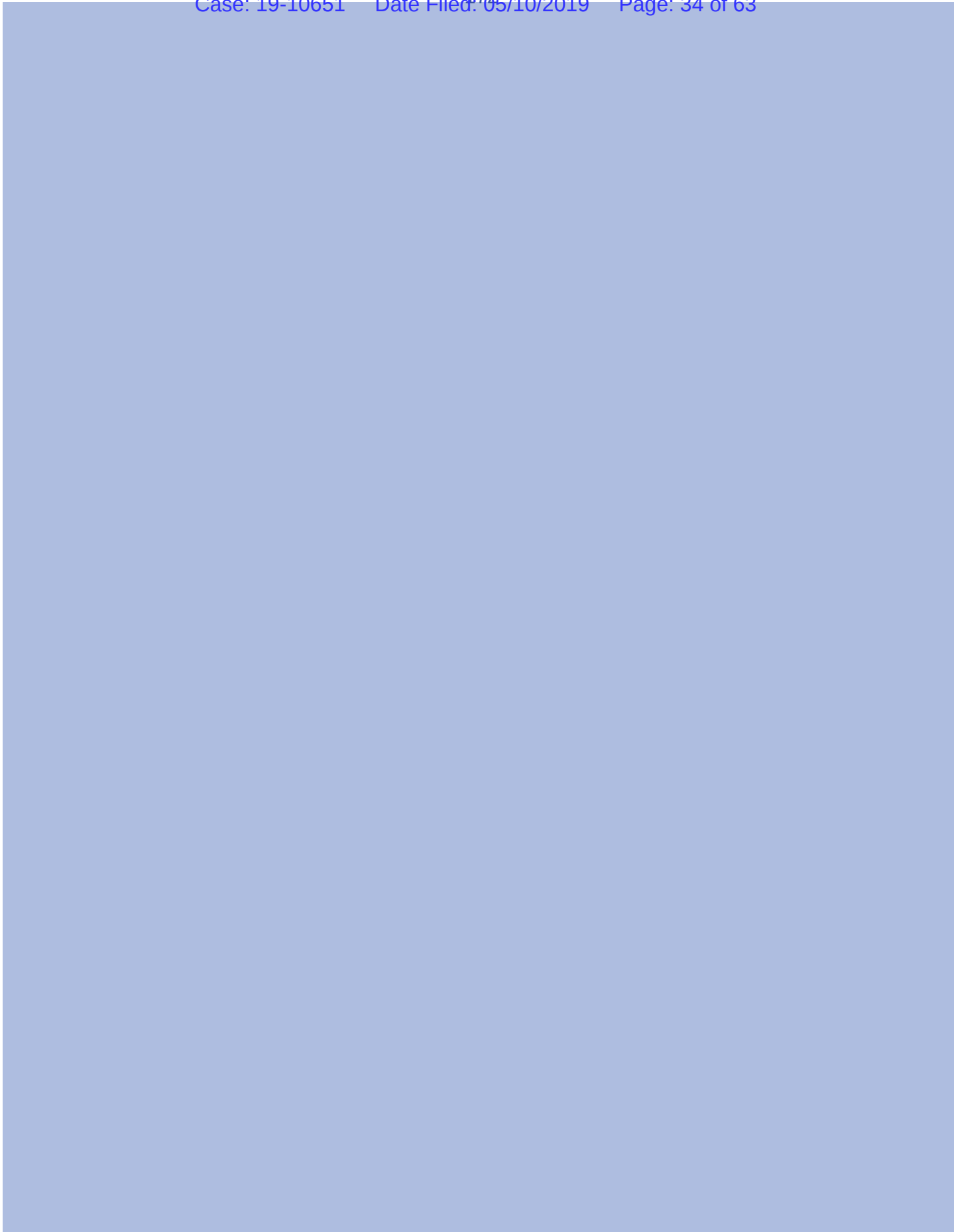
DECISION: _____

EFFECTIVE DATE: _____

E-Ballot 09/04/2014

MISCELLANEOUS BENEFIT CASE # 1

MICKELL-0911



MICKELL-0912

**BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN
DISABILITY INITIAL CLAIMS COMMITTEE MEETING
MINUTES**

Mail Ballot Decisions

Mail ballots of the Disability Initial Claims Committee (the “Committee”) of the Bert Bell/Pete Rozelle NFL Player Retirement Plan (“Plan”) were decided on various dates indicated below.

SEPTEMBER 4, 2014

Disability Initial Claims Committee:

Management Council designated member:

Patrick Reynolds

NFLPA designated member:

Chris Smith

Individual Player Cases

The committee took the following actions (unless otherwise noted, all actions were unanimous):

Redacted

MICKELL-0913

A1029

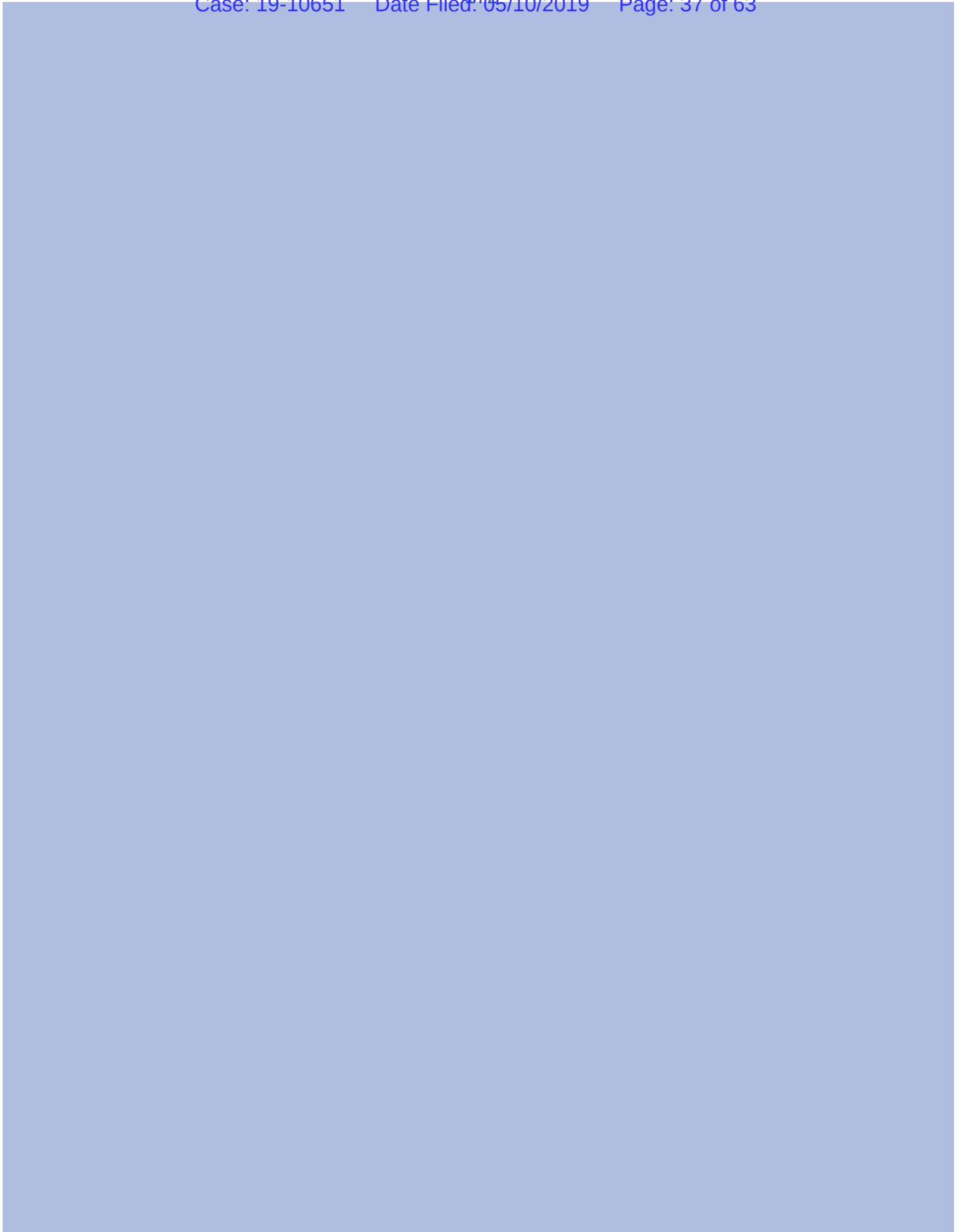
Redacted

B. MISCELLANEOUS BENEFITS

1. **Darren Mickell** On remand from the Retirement Board, denied application for total and permanent disability benefits since player is not substantially unable to engage in any occupation or employment for remuneration or profit, and consequently does not satisfy the requirements of Plan sections 5.1 and 5.2.

Redacted

MICKELL-0914



MICKELL-0915

**Bert Bell/Pete Rozelle NFL Player Retirement Plan**

200 Saint Paul Street • Suite 2420 • Baltimore, Maryland 21202-2008
410-685-5069 • 800-638-3186 • Fax 410-783-0041



NFL PLAYERS
ASSOCIATION

VIA FEDERAL EXPRESS

September 8, 2014

Mr. Darren Mickell
9250 Chelsea Dr
Miramar, FL 33025

Re: Application for Total and Permanent Disability Benefits

On September 8, 2014, the Disability Initial Claims Committee ("Committee") of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan") considered your application for total and permanent ("T&P") disability benefits. We regret to inform you that the Committee denied your application for T&P disability benefits. This letter describes the Committee's decision.

Relevant Plan Provisions

Plan section 5.1 states that "An Eligible Player whose application for total and permanent disability ("T&P") benefits is received by this Plan on or after September 1, 2011, who is determined by the Retirement Board or the Disability Initial Claims Committee to be totally and permanently disabled in accordance with Section 5.2, and who satisfies the other requirements of this Article 5, will receive a monthly T&P benefit in the amount described in Section 5.5 for the months described in Sections 5.8 and 5.9. For purposes of this Article, an Eligible Player is a Vested Inactive Player or an Active Player."

Plan section 5.2(a) states, in relevant part, that a Player "who is not receiving monthly retirement benefits under Article 4 or Article 4A will be deemed to be totally and permanently disabled if the Retirement Board or the Disability Initial Claims Committee finds (1) that he has become totally disabled to the extent that he is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit, but expressly excluding any disability suffered while in the military service of any country, and (2) that such condition is permanent."

Plan section 5.2(b) states, in relevant part, that an "An Eligible Player who is not receiving monthly pension benefits under Article 4 or 4A, who has been determined by the Social Security Administration to be eligible for disability benefits under either the Social Security disability insurance program or Supplemental Security Income program, and who is still receiving such benefits at the time he applies, will be deemed to be totally and permanently disabled, unless four voting members of the Retirement Board determine that such Player is receiving such benefits fraudulently and is not totally and permanently disabled."

RBM 05/14/2015

MICKELL-0916

A1032

Discussion

On September 8, 2014, the Committee denied your application for T&P benefits because it determined that you do not meet the standard set forth in Plan section 5.2(a).

Specifically, the Committee noted that Plan neutral orthopedist – Chaim Arlosoroff, M.D., Plan neutral neurologist – Barry J. McCasland, M.D., and Plan neutral neuro-psychologist – Stephen N. Macciocchi, Ph.D., indicated that you are employable. The Committee also noted that you have not presented evidence that you receive Social Security disability benefits. The Committee concluded that you are not totally and permanently disabled within the meaning of the Plan, and denied your application on this basis.

Appeal Rights

Attached to this letter is section 12.6 of the Plan, which governs your right to appeal the Committee's decision. You may appeal the Committee's decision to the Plan's Retirement Board by filing a written request for review with the Retirement Board at this office within 180 days of your receipt of this letter. You should also submit written comments, documents and any other information that you believe shows you qualify for these benefits. The Retirement Board will take into account all available information, regardless of whether that information was available or presented to the Committee. Please note that if the Retirement Board reaches an adverse decision on review, you may then bring a civil action under section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1132(a).

A copy of the Bert Bell/Pete Rozelle NFL Player Retirement Plan Summary Plan Description is enclosed. If you have any questions, please contact the Plan Office.

Very truly yours,



Megan Anderson
Benefits Coordinator
on behalf of the Disability Initial Claims Committee

mea

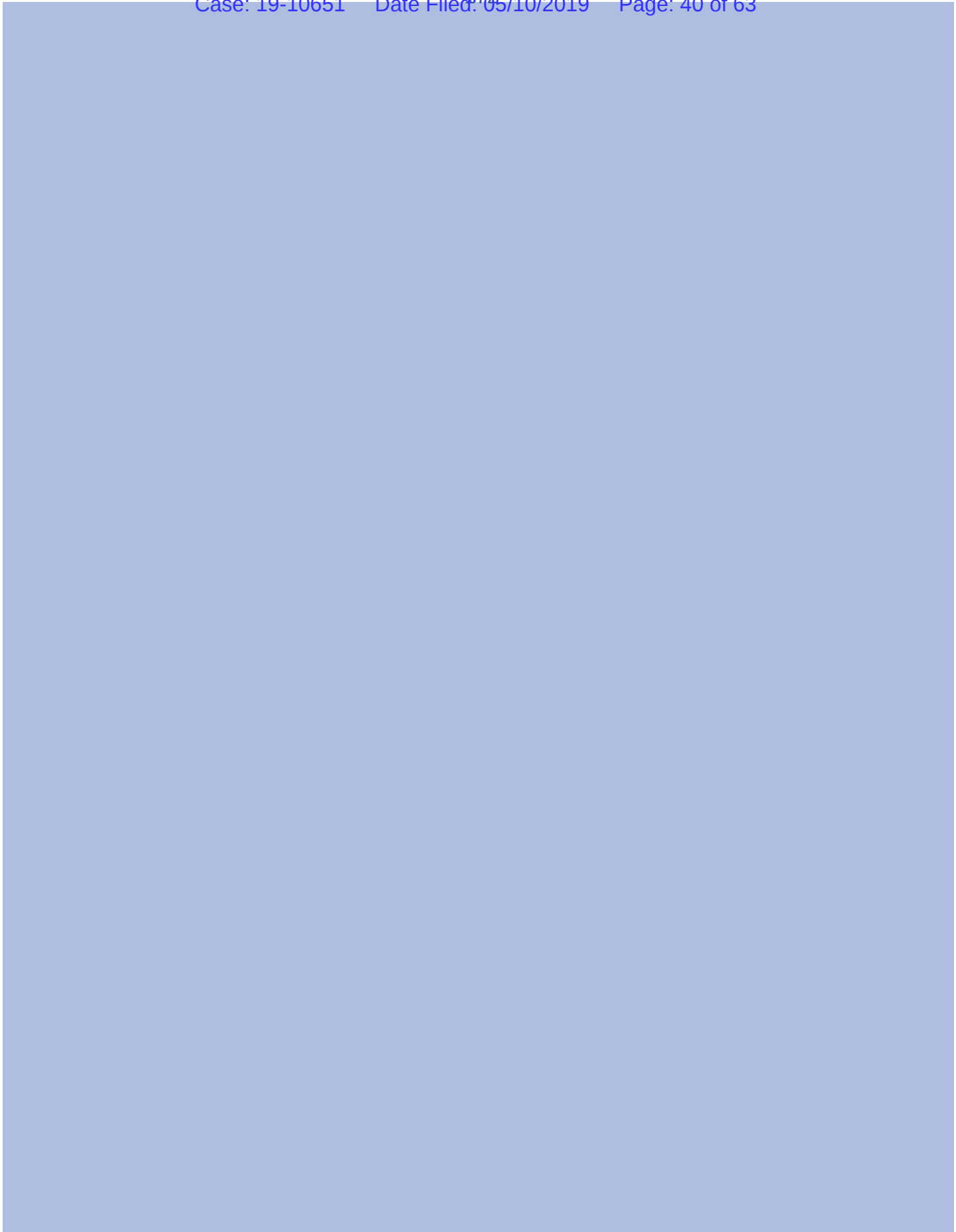
cc: Mindy Chmielarz

Enclosure

RBM 05/14/2015

MICKELL-0917

A1033



MICKELL-0918

09/11/2014 15:10 group, di law

FAX 954 989 9999

P.002/005

DI LAW GROUP

Paulino-Grisham, Smith, & Chmielarz, P.A.

September 11, 2014

Sent Via Facsimile (202) 659-4503

Alvaro I. Anillo
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-5811

Sent Via Facsimile: (410) 783-0041

Paul Scott, Director of Disability Benefits
200 St. Paul Street, Suite 2420
Baltimore, MD 21208-2008

RE: Darren Mickell

Dear Mr. Anillo and Mr. Scott:

Enclosed please find a written statement by Darren Mickell documenting his attendance at the three independent medical examinations required of him by the NFL. This correspondence is to be included as part of his Appeal documents and is to be considered during the evaluation of his claim. As indicated by Mr. Mickell, each appointment was extremely brief and very little time was spent by any of the physicians actually examining Mr. Mickell. It is extremely important that the Disability Claims Committee and your firm consider the information provided in Mr. Mickell's statement when making a determination in this matter.

Additionally, please note for your records that in contrast to what was included in the report prepared by Stephen N. Macciocchi, PhD., (who spent less than 20 minutes in direct contact with Mr. Mickell) **Mr. Mickell was not working with a friend 3 days per week** and has explicitly stated that in the enclosed statement.

Should you have any questions or wish to further discuss this matter, please do not hesitate to contact me at (954) 989-9000.

Very truly yours,


Mindy L. Chmielarz, Esquire
For the Firm

Enclosure



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Nationwide

tf 888.644.2644

Broward (Correspondences)

4151 Hollywood Boulevard
Hollywood, Florida 33021
o/c 954.989.9000
fax 954.989.9999

West Palm Beach

224 Datura Street, Suite 402
West Palm Beach, Florida 33401
o/c 561.202.9170
fax 561.202.9194

MICKELL-0919

A1035

09/11/2014 15:11 group, dl law

FAX 954 989 9999

P.003/005

To Whom it may concern,

On June 17, 2014 I saw Dr. Arlosoroff at the NFL's request. The entire experience, which included x-rays of both knees, ankles, shoulders, neck, right hip and my back took about one hour. This included the time spent taking the x-rays, time spent talking to Dr. Arlosoroff about my medical history, and a very brief examination, which lasted no more than a few minutes. He performed the same type of examination that the team doctors and trainers performed on me during the games, on the sidelines. They were sending me to play when I was injured, only to be told right before the last game of the season, that I need to have surgery on the same prior concerns, (this was done to me, in both San Diego and Kansas City). I feel like the doctors had only the team's best interest in mind. I am experiencing the same things with these Drs, and again, it seems that everyone has the NFL's interest in mind and not the PLAYERS! I was told by Dr. Arlosoroff that I could not record or video the visit with him. I was then told by the NFL's attorney that I must go to Atlanta to be examined by two more doctors for the injuries sustained to my brain. Because of commitments to my children, I was unable to attend the exams on August 4th.

MICKELL-0920

A1036

09/11/2014 15:11 group, di law

FAX 954 989 9999

P.004/005

and 5th (I was given just over 2 weeks notice that I would need to fly to Atlanta and remain there for two nights and two full days). but I did go there from August 18th to August 20th for an evaluation with a neurologist on August 19th, and then a Neuropsychologist the next day. I was so upset after the examination on August 19th, that I contacted my attorney to let her know what a waste of time it was. I was in and out of the office within one hour and spent no more than 15 to 20 minutes in direct contact with the doctor. He asked me about my medical history and I was given a few very short tests to take. The tests were nowhere near as detailed or long as those given by Dr. Todd. The next morning I was seen by the Neuropsychologist, again for a very brief time. He spent very little time trying to understand my problems and I was there less than one hour. One of the reports incorrectly stated that I worked three days a week with a friend. That is not an accurate statement. I do not work, and I do not earn money. I can't work or keep a job because I am unable to physically handle any type of work due to my injuries.

MICKELL-0921

A1037

FAX 954 989 9999

P.005/005

09/11/2014 15:12 group, di law

I tried and obtained employment in 2012 at FHI. This was my only year working since leaving the NFL. I was placed on a 3-4 day work schedule due to my injuries.

I have no idea how any of these physicians can claim to understand my medical condition or comment on my ability to function because they spent so little time with me, and based on the questions they asked, they did not review my medical records or speak with my doctors!

Thank you. Darrell Mickell

D. Mickell
9/9/14

MICKELL-0922

A1038



MICKELL-0923

10/21/2014 12:33 Mickell, Darren

(FAX) 954 989 9999

P.005/007



September 15, 2014

Sent Via U.S. Mail & Facsimile: (410) 783-0041

Retirement Board for the
 Bert Bell/Pete Rozelle NFL Player Retirement Plan
 Attn: Megan Anderson, Benefits Coordinator
 200 Saint Paul Street, Suite 2420
 Baltimore, MD 21202-2008

RE: Darren Mickell – Appeal for Review of Claim for Total and Permanent Disability Benefits

Dear Ms. Anderson:

As you are aware, this Firm represents Mr. Darren Mickell in the above-referenced matter. I am in receipt of your letter dated September 8, 2014, wherein the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("NFL Player Retirement Plan") denied Mr. Mickell's claim for disability benefits in the above-referenced matter.

Pursuant to the full and fair disclosure requirements of the Employment Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (hereinafter referred to as "ERISA"), Mr. Mickell is exercising his right, and NFL Player Retirement Plan is being requested to forward copies of all documents "relevant"¹ to NFL Player Retirement Plan's determination to deny benefits in the above-referenced matter to our Hollywood office location, at **4151 Hollywood Boulevard, Hollywood, FL 33021** in a timely manner, including **but not limited** to any of the following documents and/or information in its control or possession:

- A complete copy of Mr. Mickell's underwriting and claim files for Mr. Mickell's disability claim with NFL Player Retirement Plan;

¹ Pursuant to 29 C.F.R. § 2560.503-1: "[a] document, record, or other information shall be considered 'relevant' to a claimant's claim if such document, record, or other information

- (i) Was relied upon in making the benefit determination;
- (ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;
- (iii) Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5) of this section in making the benefit determination; or
- (iv) In the case of a group health plan or a plan providing disability benefits, constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination."



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Broward (Correspondences)
 4151 Hollywood Boulevard
 Hollywood, Florida 33021
 o/c 954.989.9000
 fax 954.989.9999

Palm Beach
 14255 U.S. Highway One, Suite 235
 Juno Beach, Florida 33408
 o/c 561.202.9170
 fax 561.202.9194

MICKELL-0924

10/21/2014 12:34 Mickell, Darren

(FAX) 954 989 9999

P.006/007

Page 2 of 3

- A complete copy of the summary plan description, disability insurance policy, plan documents, and any other documents under which the plan is established or operated that are relevant to the above-referenced matter;
- Any and all documentation relevant to whether the disability plans at issue in this matter are governed by ERISA (or are not governed by ERISA, or are exempt from ERISA);
- Any and all inter office memoranda, notes, reports, communications or documents relevant to its review of Mr. Mickell's disability claim;
- Any and all correspondence (including E-mail) by the NFL Player Retirement Plan and any third party relevant to its review of Mr. Mickell's disability claim;
- Any and all internal correspondence (including E-mail) by NFL Player Retirement Plan to Mr. Mickell's disability claim;
- All telephone logs, transcripts and audio recordings discussing Mr. Mickell's claim or entitlement to benefits;
- Copies of any and all video footage of anything relevant to NFL Player Retirement Plan's claim determination (including but not limited to: video surveillance of Mr. Mickell, video footage of medical examinations, videotaped statements, and all other relevant video footage);
- Any and all financial analysis, notes or reports relevant to Mr. Mickell's disability claim, including but not limited to any calculation of the reserves placed on the claim, any calculation of the total cost of payment of the maximum benefits under the policy, or calculation of any type of monetary savings to NFL Player Retirement Plan as a result of the claim denial(s);
- Curriculum Vitae and/or Resumes of all doctors, vocational professionals, and any other professionals who were involved in and/or evaluated Mr. Mickell's disability claim;
- All reports and all other forms of documentation generated by specialists, including but not limited to physicians, vocational experts, and medical professionals relevant to Mr. Mickell's disability claim;
- Medical reports and medical records summaries completed by or at the request of NFL Player Retirement Plan that are relevant to Mr. Mickell's disability claim;
- Claim manuals, directives, explanations, guides, memorandums, etc., that discuss the administration and evaluation of claims by NFL Player Retirement Plan;
- Claims Review Training documents used by NFL Player Retirement Plan;
- Claims Review Training videos and tapes used by NFL Player Retirement Plan;
- Guides pertaining to claims resolutions used by NFL Player Retirement Plan;
- Medical guides relied upon for assessing impairment;
- Marketing materials concerning the subject disability plan(s);



MICKELL-0925

A1041

10/21/2014 12:34 Mickell, Darren

(FAX) 954 989 9999

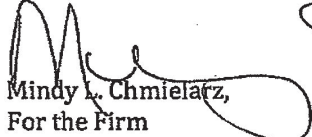
P.007/007

Page 3 of 3

- Any and all documents demonstrating compliance with the requirement that NFL Player Retirement Plan claim procedures contain administrative processes and safeguards designed to ensure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants, in making the benefit determination at issue here;
- Any and all statement(s) of policy or guidance with respect to the plan concerning the denied benefit, without regard to whether such advice or statement was relied upon making the benefit determination;
- If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, please provide either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion; and
- Any and all other documents, reports, communications or information relevant to Mr. Mickell's claim for disability benefits and NFL Player Retirement Plan's claim determination and reasons for NFL Player Retirement Plan's denial of payment of full benefits.

I will look forward to your timely and cooperative response. You may contact me with any questions or concerns at (954) 989-9000, extension 222.

Very truly yours,

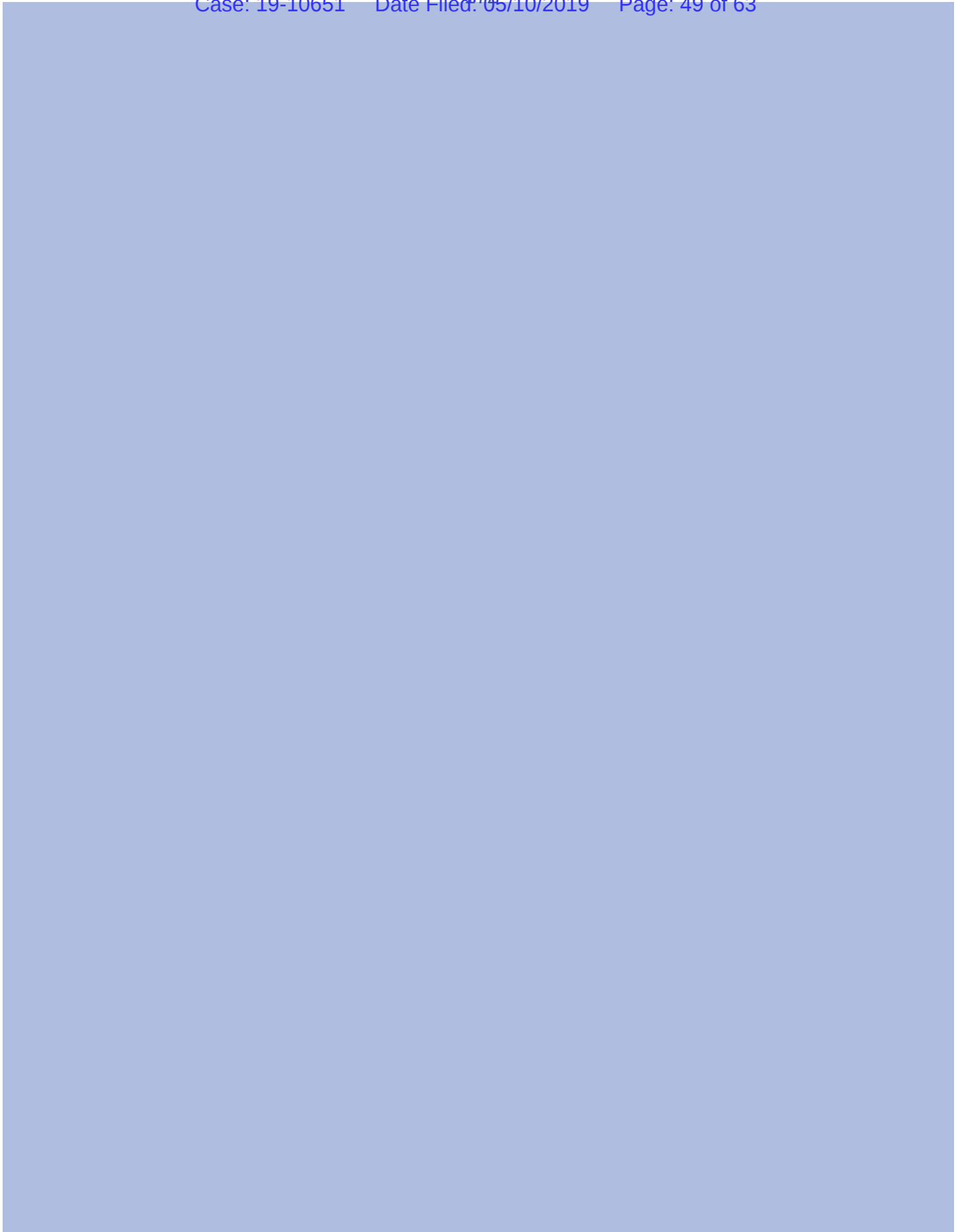

Mindy L. Chmielatz,
For the Firm

MLC/sh
cc: Mr. Darren Mickell

DC

MICKELL-0926

A1042



MICKELL-0927



Bert Bell/Pete Rozelle NFL Player Retirement Plan

200 Saint Paul Street • Suite 2420 • Baltimore, Maryland 21202-2008
410-685-5069 • 800-638-3186 • Fax 410-783-0041



NFL PLAYERS
ASSOCIATION

MEMORANDUM

TO: Rita Xia
Groom Law Group
1701 Pennsylvania Ave NW
Ste 1200
Washington, DC 20006

Date: September 16, 2014

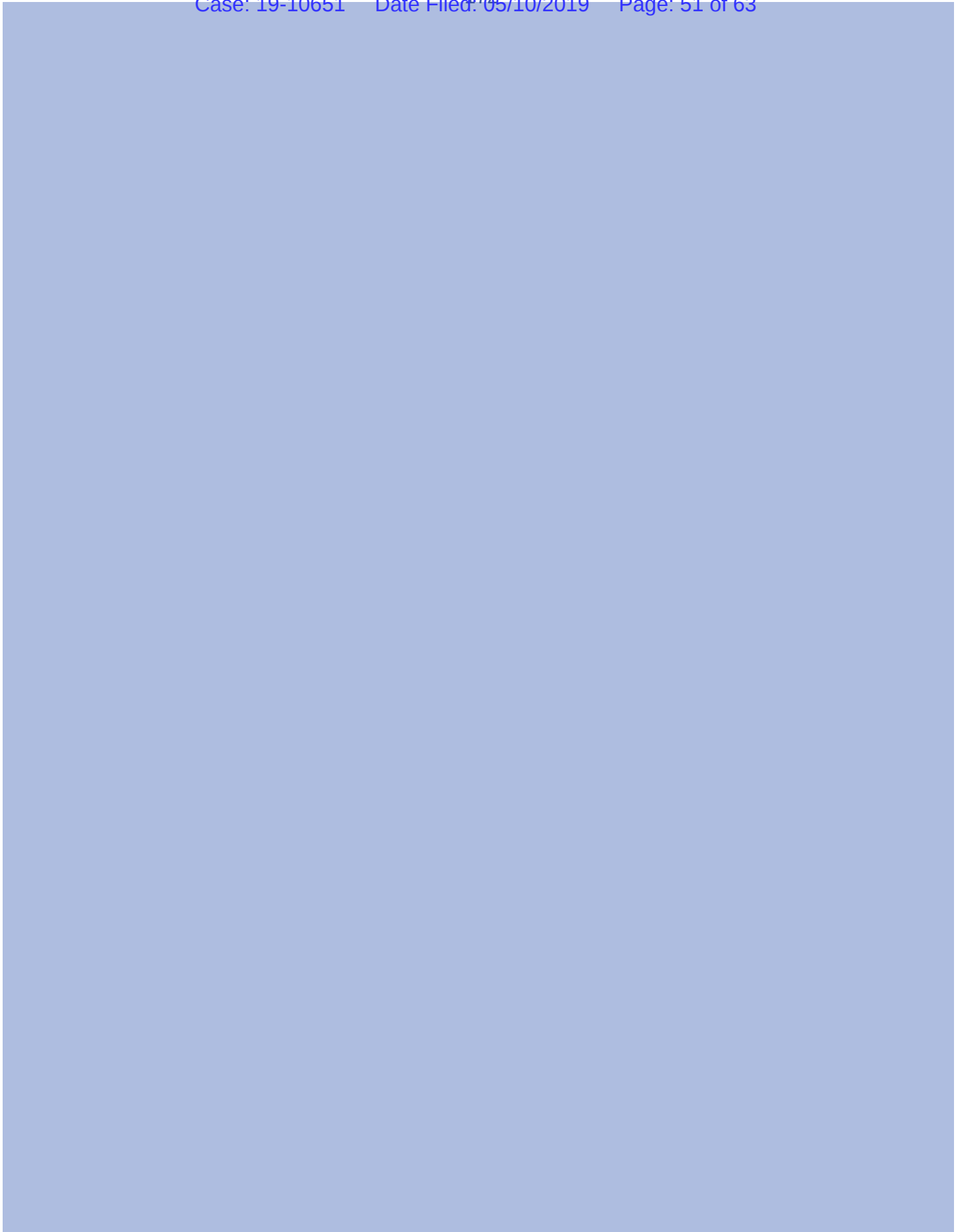
FROM: Megan Anderson

RE: Bert Bell/Pete Rozelle NFL Player Retirement Plan

As requested by the Players attorney, Mindy Chmielarz, enclosed is a copy of Mr. Mickells file. Please forward it to Ms. Chmielarz at this address: 4151 Hollywood Boulevard Hollywood, FL 33021. If you have any questions, please let me know.

MICKELL-0928

A1044



MICKELL-0929



Will Wilder
(202) 861-6640
wwilder@groom.com

September 18, 2014

Mindy Chmielarz
DI Law Group
4151 Hollywood Blvd.
Hollywood, FL 33021

Re: Darren Mickell

Dear Ms. Chmielarz:

We are counsel to the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Plan").
In response to your recent request, we enclose a complete copy of Darren Mickell's file.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Wilder".

Will Wilder

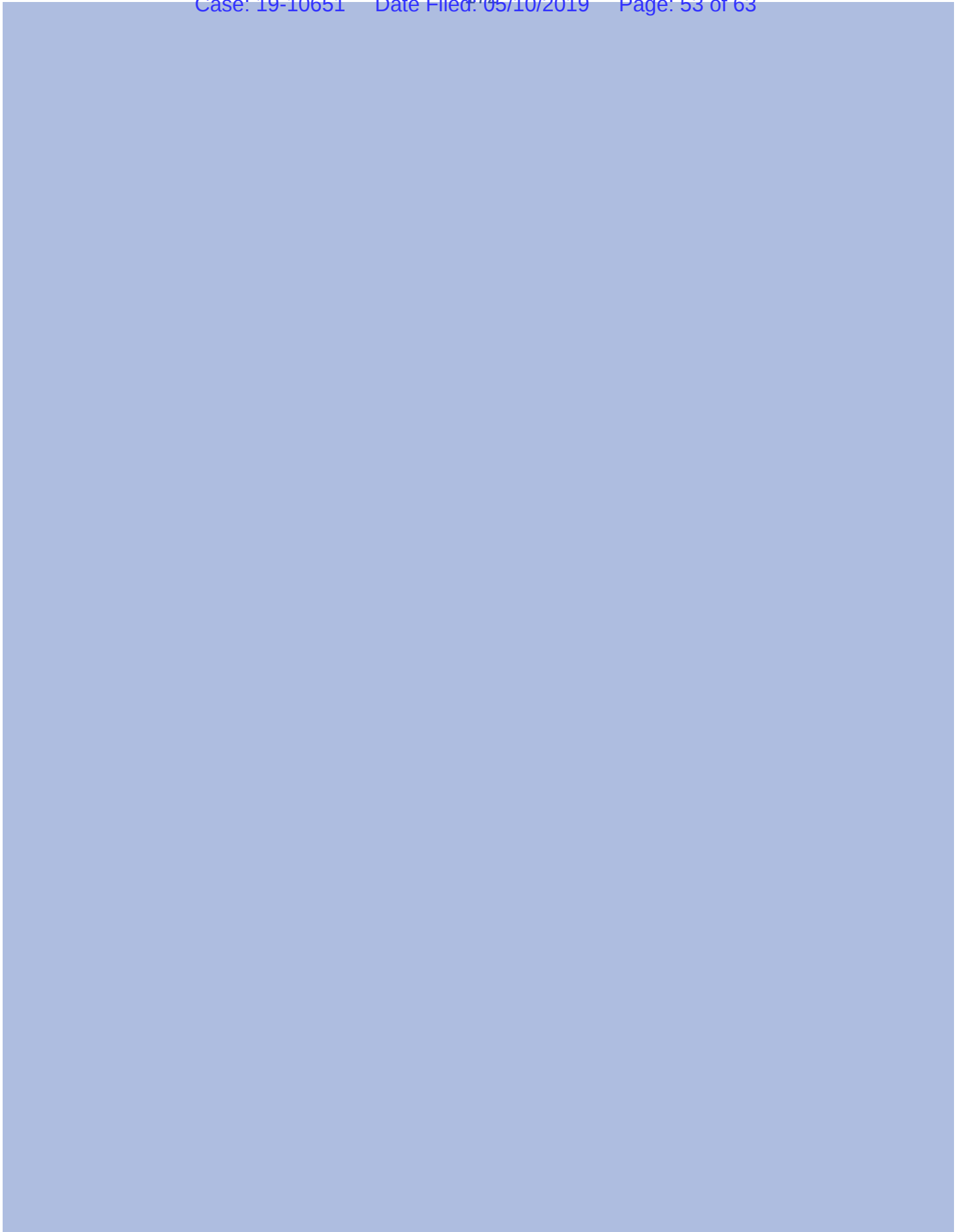
Enclosures

cc: Megan Anderson (w/o encl.)

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1701 Pennsylvania Ave., N.W. • Washington, D.C. 20006-5811
202-857-0620 • Fax: 202-659-4503 • www.groom.com

MICKELL-0930

A1046



MICKELL-0931

10/21/2014 12:32 Mickell, Darren

FAX 954 989 9999

P.002/007



Paulino-Grisham, Smith, & Chmielarz, P.A.

October 21, 2014

Sent Via U.S. Mail & Facsimile: (410) 783-0041

Retirement Board for the
Bert Bell/Pete Rozelle NFL Player Retirement Plan
Attn: Megan Anderson, Benefits Coordinator
200 Saint Paul Street, Suite 2420
Baltimore, MD 21202-2008

RE: Darren Mickell – Appeal for Review of Claim for Total and Permanent Disability Benefits

Dear Ms. Anderson:

As you are aware, this Firm represents Mr. Darren Mickell in the above-referenced matter. As of today, we have not yet received a response from Bert Bell/Pete Rozelle FNL Retirement Plan in regard to the correspondence sent from this Firm on September 15, 2014. Annexed hereto for your review is another copy of the September 15, 2014 correspondence for your review.

We are requesting your prompt attention in this matter. I remind you of your obligations under applicable law to effectively and timely communicate with your beneficiary. Should you have any questions please contact me at (954) 989-9000 ext. 222. Your timely response is required.

Very truly yours,


Mindy L. Chmielarz,
For the Firm

MLC/sh
cc: Mr. Darren Mickell



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t 888.644.2644

Broward (Correspondences)
4151 Hollywood Boulevard
Hollywood, Florida 33021
o/c 954.989.9000
fax 954.989.9999

Palm Beach
14255 U.S. Highway One, Suite 235
Juno Beach, Florida 33408
o/c 561.202.9170
fax 561.202.9194

MICKELL-0932

A1048



MICKELL-0933



Paulino-Grisham, Smith, & Chmielarz, P.A.

March 9, 2015

Sent Via Facsimile (410) 783-0041 (Letter only)**& Via Federal Express**

Retirement Board for the

Bert Bell/Pete Rozelle NFL Player Retirement Plan

Attn.: Paul Scott, Director of Disability Benefits**on behalf of the Disability Initial Claims Committee**

200 St. Paul Street, Suite 2420

Baltimore, MD 21208-2008

RE: Appeal of Denied Application for Total and Permanent Disability Benefits

Dear Mr. Scott:

As you are aware, this Firm represents Darren Mickell in his claim for Total and Permanent ("T&P") Disability Benefits under the terms of the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Plan"). This correspondence and the information annexed hereto, as well as all information previously provided, serve as Mr. Mickell's formal appeal and response to the September 8, 2014 denial letter (the "Denial Letter"), which denied Mr. Mickell his right to total and permanent disability benefits in the above-referenced matter.¹

Long Term Disability Plan Language

Under the clear, express terms of the Plan Mr. Mickell is entitled to total and permanent disability benefits because he is totally and permanently disabled in accordance with Section 5.2 and has satisfied the requirements of Article 5 of the Plan. Relevant provisions from the Plan include the following:

5.1 Eligibility.

An Eligible Player whose application For total and permanent disability ("T&P") benefits is received by this Plan on or after September 1, 2011, who is determined by the Retirement Board or the Disability Initial Claims Committee to be totally and permanently disabled in accordance with Section. 5.2, and who satisfies the other requirements of Article 5, will receive a monthly T&P benefit in the amount described in Section 5.5 for the months described in Sections 5.8 and 5.9.

¹ A copy of the Denial Letter is attached to this Appeal as Exhibit "1".

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RBM 05/14/2015

West Palm Beach

224 Datura Street, Suite 402
West Palm Beach, Florida 33401
ofc 561.202.9170
fax 561.202.9194

Miami (Correspondences)

5803 NW 151st Street, Suite 200A
Miami Lakes, Florida 33014
ofc 305.320.0800
fax 305.320.0888

Broward

4131 Hollywood Boulevard
Hollywood, Florida 33021
ofc 954.351.7688

RECEIVED

MAR 11 2015

NFL PLAYER BENEFITS

MICKELL-0934

Claimants name: Darren Mickell
 Appeal of T&P Benefit Denial

5.2 Determination of Total and Permanent Disability.

General Standard. An Eligible Player who is not receiving monthly retirement benefits under Article 4 or Article 4A will be deemed to be totally and permanently disabled if the Retirement Board or the Disability Initial Claims Committee finds (1) that he has become totally disabled to the extent that he is substantially prevented from, or substantially unable to engage in any occupation or employment for remuneration or profit, but expressly excluding any disability suffered while in the military service of any country, and (2) that such condition is permanent. The educational level and prior training of a Player will not be considered in determining whether such Player is "unable to engage in any occupation or employment for remuneration or profit." A Player will not be considered to be able to engage in any occupation or employment for remuneration or profit within the meaning of this Section. 5.2 merely because, such person is employed by the League or an Employer, manages personal, or family investments, is employed by or associated with a charitable organization, is employed out of benevolence, or receives up to \$30,000 per year in earned income. A disability will be deemed to be "permanent" if it has persisted or is expected to persist for at least twelve months from the date of its occurrence, excluding any reasonably possible recovery period.

The Disability Claims Committee Failed in its Duty to Act Solely and Exclusively in the Interest of Mr. Mickell and His Beneficiaries

The Plan provides retirement, disability, and related benefits to eligible National Football League ("NFL") players and their beneficiaries. As noted above, under Article 5 of the Plan, a covered player who becomes "totally and permanently" disabled is eligible to receive a monthly total and permanent disability (T&P) benefit. A player is totally disabled if he is substantially unable to engage in any occupation or employment for remuneration or profit. T&P benefit claims are first reviewed by the Plan's Disability Initial Claims Committee ("the Committee"). The Committee's decision may be appealed to the Board. Under Article 8, the Plan gives the Board "full and absolute discretion, authority and power to interpret, control, implement, and manage the plan. However, under Section 8.8 *Duty of Care*, the Plan also provides the following (emphasis added):

8.8 Duty of Care The Retirement Board and the Disability Initial Claims Committee will discharge their duties with respect to the Plan and Trust solely and exclusively in the interest of the Players and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

RBM 05/14/2015



MICKELL-0935

A1051

Claimants name: Darren Mickell
Appeal of T&P Benefit Denial

In this case, the review process undertaken by the Committee and its decision to deny benefits to Mr. Mickell was not the result of careful, skillful and diligent reasoning, but rather the result of a biased and incomplete claim review; and based solely on the under informed and questionable opinions of Chaim Arlosoroff, M.D., Barry J. McCasland, M.D., and Stephen M. Macciocchi, PhD.

Section 12.6 of the Plan sets forth the procedures that must be followed if a claim for disability benefits under Articles 5 and 6 of the Plan is wholly or partially denied. In accordance with the Plan a *notice of adverse determination will be written in a manner calculated to be understood by the claimant and will set forth the following:*

- (1) The ***specific*** reason(s) for the adverse determination;
- (2) Reference to the ***specific plan provisions*** on which the determination is based;
- (3) A description of additional material or information, if any, needed to perfect the claim ***and the reasons such material or information is necessary;***
- (4) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under ERISA section 502(a) following an adverse benefit determination on review;
- (5) Any **internal rule, guideline, protocol, or other similar criterion relied on in making the determination**, (or state that such information is available free of charge upon request);
- (6) If the determination was based on a scientific or clinical exclusion or limit, an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's circumstances (or state that such explanation is available free of charge upon request).

The September 8, 2014 Denial Letter failed to comply with these clear notice requirements. The Committee cited to only some of the relevant plan provisions and included a single paragraph as its rationale for denial in which it stated simply that benefits were denied based on the opinions of three reviewing physicians. A review of the claim evaluation that occurred in this claim reveals, unequivocally, that the Committee failed in its duty of care to Mr. Mickell; that it failed to conduct a full and fair review as required under ERISA; and that its mishandling of this claim resulted in an arbitrary and capricious denial of benefits.

RBM 05/14/2015



MICKELL-0936

Claimants name: Darren Mickell
Appeal of T&P Benefit Denial

Summary of the Claim and Evidence of the Committee's Failure to Conduct a Full and Fair Review of Mr. Mickell's Claim for Disability Benefits

As you are aware, Mr. Mickell played professional football for the National Football League ("NFL") from 1992 to 2001. During that time and as the direct result of playing football for the NFL, Mr. Mickell sustained serious injuries. Darren Mickell played all seasons for the NFL as a defensive end. Some of the rule changes since Mr. Mickell stopped playing for the NFL reflect the inherently violent nature of the game, particularly when it comes to contact with a player's head. These rule changes shed light on the environment into which Mr. Mickell entered and played in and throughout his career. Mr. Mickell likely suffered countless impacts to the head, on a regular basis, with the most physically imposing players on the field.

Defensive End (line play)²

As a defensive end (DE), Mr. Mickell was subjected to one of the most physically violent parts at or near the line of scrimmage. This matchup within the game is commonly referred to as "the trenches" for its rigorous physical play. The position has undergone an evolution throughout the history of the game, and a DE's role on a particular roster is affected by numerous factors including the scheme and philosophy of the coach. However, there are characteristics that have remained constant throughout the years and that transcend variables like those mentioned. The most important of which is the placement on the field.

The DE is on outer edge of the defensive line, on the line of scrimmage. His primary role is to contain the edge or tackle the ball carrier on running plays; and to tackle or "rush" (hurry) the passer on passing plays. He is usually pitted against the most talented of offensive linemen and is often subject to double-teams or attention from opponents other than the one he is primarily engaged with throughout the game. The DE is involved in the "fight for the line of scrimmage." This is generally an important matchup between teams, as it is the "point of attack" from which the play develops and either succeeds or fails, based on the time allowed or space created by the offensive line. Teams design complex blocking schemes to catch defensive players off guard and off balance and to exploit any potential weakness a player may exhibit. On

² The following links were referred to for the information contained in this section: <http://www.pro-football-reference.com/players/M/MickDa20.htm>; <http://www.nfl.com/news/story/0ap1000000224872/article/evolution-of-the-rules-from-hashmarksto-crackback-blocks>; and www.nfl.com/rulebook



Claimants name: Darren Mickell
Appeal of T&P Benefit Denial

the majority of plays the DE is a player that must be accounted for if a play is to succeed, whether run or pass. This means he will be engaged with an opposing player on almost every play.

Rule Changes

The rule changes and expansions of definitions provide insight into the environment in which Mr. Mickell played and show why and how he suffered a significant number of hits to the head. The rule changes below span, from just prior to Mr. Mickell's entry into the NFL, through well after his retirement. The rules do not prohibit contact to the head entirely, but spell out the circumstances in which such contact will result in a penalty. A player could be under the protection of the rules depending on his status as a "defenseless player," a term of art. The expansion of this definition highlights the number of situations that were not subject to the rules before being included.

In 1990 a rule change stated a player "may" be subject to disqualification if he "butts, spears, or rams an opponent," if the action was "flagrant or vicious." However, it is rare that a player is ejected or disqualified. In 1995 a rule change clarified and expanded protection for "defenseless players" and prohibited players "from lowering their heads to make forcible contact with the facemask, or with the 'hairline' or forehead part of the helmet, against an opponent, instead of only with the top/crown." It also prohibited "forcibly hitting the defenseless player's head, neck, or face with the helmet or facemask," and made it illegal to launch into "a defenseless player in a way that causes the defensive player's helmet or facemask to forcibly strike the defenseless player's head, neck, or face, even if the initial contact of the defender's helmet or facemask is lower than the defenseless player's neck." In 2010, all "defenseless players" became "protected from blows to the head delivered by an opponent's helmet, forearm, or shoulder." In 2011, "the list of 'defenseless players' was expanded to include a player who receives a 'blindsides' block when the blocker is moving toward his own endline and approaches the opponent from behind or from the side. Previously, these players were protected against blows to the head, but not against blows delivered by an opponent with the top/crown or forehead/'hairline' parts of the helmet against other parts of the body." In 2012, the list of "defenseless players" was expanded to include defensive players on crackback³ blocks, making it illegal to hit them in the head or neck area. Mr. Mickell was likely on the receiving end of many of these blocks given his position, however he retired long before the revised definition. There are concussions on a nearly weekly basis and there are not always corresponding penalties

³ A "crackback" is defined, but generally occurs when an offensive player blindsides a defender to eliminate him as a threat to tackle the ball carrier. It often occurs when the defender is engaged with another opposing player and is "blindsided" by a second opposing player. Regardless of the particulars, it is a situation which allows a defensive player to be hit by surprise or while he is otherwise occupied.

RBM 05/14/2015



MICKELL-0938

Claimants name: Darren Mickell
Appeal of T&P Benefit Denial

assessed. Mr. Mickell played in this environment participating in most or all of the games for 6 of his 9 seasons, subjecting him to years of the physical stress described above.

Despite pushing himself to play through pain and the ongoing aggravation of numerous injuries to his knees, shoulders, hips and back, by the end of 2000 Mr. Mickell could no longer play football. In addition to the debilitating physical injuries sustained during his years with the NFL, Mr. Mickell suffered cognitive deficiencies which have been documented and verified. Upon leaving the NFL, he believed that time away from the game and a sedentary lifestyle would resolve his injuries and allow him to heal both physically and mentally. Unfortunately, it became evident that despite attempts at recovery Mr. Mickell's health continued to decline and he remained unable to work in any capacity due to daily, constant headaches, severe pain and limitations in both shoulders; chronic, stabbing pain down his back; constant hip pain; and achiness in both knees, memory problems, the inability to stay focused, problems controlling his anger and emotions, and a clear loss of cognitive functioning.

In April 2012, Mr. Mickell felt he had no choice but to find work in order to support his family. Despite having attended the University of Florida, the only work Mr. Mickell felt qualified to perform was simple labor in a job that he hoped involved little thinking and minimal interaction with other employees. He worked part time for 1 ½ years, but finally had to quit due to physical pain and weakness as well as his cognitive limitations.

In June 2013 Mr. Mickell contacted the NFL Retirement Plan and requested an application for disability benefits. His application was completed on July 12, 2013.⁴ In a letter dated August 19, 2013, Mr. Mickell was advised that his application is being considered, but the Committee tabled its consideration to allow him additional time to submit information about his current employment activities. The completed application was received by the NFL on September 17, 2013.

In a letter to Mr. Mickell dated September 27, 2013 he was advised that the sole reason his application for T&P disability was denied was *because you are currently employed. The Committee determined that your current employment is not associated with the League or an Employer, personal or family investments, a charitable organization, or out of benevolence. Therefore, the Committee found that you are not totally and permanently disabled under the Plan section 5.2(a).*⁵ This was the only reason provided as the basis for the denial and Mr. Mickell was provided with the opportunity to appeal this decision. The Appeal letter was timely submitted on March 11, 2014 but due to delays in getting records from Mr. Mickell's physicians and the NFL as well as a copy of his claim file from the NFL the final appeal was not filed until June 30, 2014.

⁴ A copy of Mr. Mickell's application is attached to this Appeal as Exhibit "2".

⁵ A copy of the 9/27/2013 Denial Letter is attached to this Appeal as Exhibit "3"

RBM 05/14/2015



MICKELL-0939

A1055

Claimants name: Darren Mickell
Appeal of T&P Benefit Denial

On June 4, 2014 Mr. Mickell received a letter from Megan Anderson, Benefits Coordinator for the NFL Player Retirement Plan, enclosing a Notice of Neutral Physician's Evaluation scheduled with Dr. Chaim Arlosoroff in North Palm Beach for Monday June 9, 2014. Ms. Anderson was advised that because the notice was not received until 5 days before the examination, which was scheduled more than 70 miles from Mr. Mickell's home, he needed them to reschedule as he needed additional time to make travel arrangements because he has problems driving long distances (140 miles roundtrip). Additionally, she was advised that **in accordance with his legal rights under Florida law, Mr. Mickell intends to have the IME videotaped by a 3rd, independent party** and that Mr. Mickell will arrange for the videographer and pay the expense.⁶ Mr. Mickell was advised that the NFL refused to allow the Examination to be videotaped and it was rescheduled to June 17, 2014.

The revised Notice of the Independent Medical Examination was not received until June 9, 2014 and the correspondence advised that *if there are additional impaired body parts that you would like the neutral physician to examine, you must advise us in writing of those body parts by June 10, 2014. Also, if there are additional medical records you wish the physician to review, please forward them to the Plan Office as soon as possible and we will forward them to the neutral physician.*⁷ Due to the very short amount of time between the receipt of the IME notice and the exam itself as well as the extensive amount of records to be pulled and copied, records were sent via overnight Federal Express to the Plan office on June 17, 2014.⁸ Just prior to that, a letter dated June 16, 2014 was sent to Ms. Anderson summarizing and confirming a conversation with attorney Alvaro I. Anillo in which Mr. Anillo asserted that the Plan refused to allow videotaping and during which he refused to provide a legal explanation for this assertion.⁹ It was further noted in that correspondence that the Plan's refusal to allow Mr. Mickell to videotape the evaluation directly infringed upon his rights under Florida law. However, Ms. Anderson was also informed that despite the Plan's refusal to allow Mr. Mickell his legal right to a videographer and/or explain its reason for this decision, Mr. Mickell would still attend the IME as scheduled, although he maintained his right to challenge the independence of the evaluation and the Plan's reasonableness in investigating his claim. A rather curt and rude response to that letter was sent by Mr. Anillo who incorrectly asserted that the information in the June 16, 2014 letter mischaracterized their conversation and that he disagrees *wholeheartedly with [your] assessment that the Plan's policy against videotaping violates Mr. Mickell's rights under ERISA or implies anything about the Plan's "motives".*¹⁰ Mr. Mickell's response to that letter was faxed to Mr. Anillo on June 20, 2014 responding to his incorrect statements.¹¹

On June 30, 2014, all documents in support of Mr. Mickell's right to disability benefits under the Plan and his full response to the September 27, 2013 Denial Letter was filed with the

⁶ A copy of the June 4, 2014 letter to Ms. Anderson is attached to this Appeal as Exhibit "4".

⁷ A copy of the June 5, 2014 IME Notice is attached to this Appeal as Exhibit "5".

⁸ A copy of the June 17, 2014 letter with medical records is attached to this Appeal as Exhibit "6".

⁹ A copy of the June 16, 2014 letter is attached to this Appeal as Exhibit "7".

¹⁰ A copy of the June 19, 2014 from Mr. Anillo is attached to this Appeal as Exhibit "8".

¹¹ A copy of the June 20, 2014 response is attached to this Appeal as Exhibit "9".

RBM 05/14/2015

MICKELL-0940

Claimants name: Darren Mickell
Appeal of T&P Benefit Denial

Disability Initial Claims Committee, specifically with Mr. Paul Scott, the Director of Disability Benefits.¹² Again, the only reason for the initial denial of t&p benefits was that Mr. Mickell's earnings exceeded \$30,000.00 and therefore he was ineligible for benefits:

On September 27, 2013 the Committee denied your application for T&P benefits because you are currently employed. The Committee determined that your current employment is not associated with the League or an Employer, personal or family investments, a charitable organization, or out of benevolence. Therefore, the Committee found that you are not totally and permanently disabled under the Plan section 5.2(a).

As that appeared to be the only basis for the denial of benefits, Mr. Mickell simply had to show that he received less than \$30,000 per year in earned income in order for his benefits to be approved. However, in an abundance of caution, Mr. Mickell also submitted medical information confirming that he is substantially prevented from and substantially unable to engage in any occupation or employment for remuneration or profit; his condition is permanent; and his total and permanent disability arose out of League football activities and while he was an *active Player* with the NFL. The June 30, 2014 Appeal letter and documents provided the NFL with conclusive evidence that Mr. Mickell earned significantly less than the \$30,000 per year threshold and was totally and permanently disabled due to the extent of the injuries sustained during his time with the NFL.

During the review of this appeal, Mr. Mickell received a letter dated July 15, 2014, advising him that two additional *Required Medical Examinations* had been scheduled for August 4th and August 5th, 2014 in Atlanta, Georgia.¹³ Again, Mr. Mickell was provided very little time to make the arrangements necessary to attend these appointments. A response to this request was sent to Mr. Anillo on July 21, 2014, advising that Mr. Mickell required sufficient time to submit all information and documents in support of his claim in order to allow the Committee to fully and fairly evaluate his ERISA claim as well as a second request to review the IME report prepared by Dr. Arlosoroff.¹⁴ Mr. Mickell also asked that these appointments be rescheduled for a later date in August so that he would have time to make arrangements for his children. It was further pointed out to Mr. Anillo that Dr. Arlosoroff did not have time to review all of Mr. Mickell's medical records before the exam, as he advised Mr. Mickell he had not received it from the Committee. Mr. Anillo was asked whether Dr. Arlosoroff will be provided with these records and review them before issuing his IME report or if his opinion will be based solely on his very brief examination of Mr. Mickell. The July 21, 2014 letter further advised that Mr. Mickell was quite upset that Dr. Arlosoroff spent less than 30 minutes with him, including the time spent discussing Mr. Mickell's background and medical history. According to Mr. Mickell, Dr. Arlosoroff was in a hurry and spent very little time actually examining him. While Dr.

¹² The Appeal Letter dated June 30, 2014 is attached to this Appeal as Exhibit "10". Because the exhibits, including medical records, are already part of this Claim File, the hundreds of pages of exhibits are attached to this appeal on a CD as Exhibit "11".

¹³ A copy of the IME Notices for August 4 and 5, 2014 is attached to this Appeal as Exhibit "12".

¹⁴ A copy of the July 21, 2014 letter is attached to this Appeal as Exhibit "13".

RBM 05/14/2015



MICKELL-0941